

ESTTA Tracking number: **ESTTA740076**

Filing date: **04/14/2016**

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

Proceeding	91220927
Party	Plaintiff HEINEKEN ASIA PACIFIC Pte. Ltd.
Correspondence Address	JOHN J DABNEY MCDERMOTT WILL & EMERY LLP 500 NORTH CAPITOL ST NW WASHINGTON, DC 20001 UNITED STATES jdabney@mwe.com, dciplit@mwe.com, kbukrinsky@mwe.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	John J. Dabney
Filer's e-mail	jdabney@mwe.com, dciplit@mwe.com, ksandacz@mwe.com, kbukrinsky@mwe.com
Signature	/s/ John J. Dabney
Date	04/14/2016
Attachments	Motion to Amend Notice of Opposition.pdf(47357 bytes) Declaration of Katie Bukrinsky Re Motion to Amend Notice of Opp.pdf(34559 bytes) Ex 1 - Opposer's First Set of RFPs - TIGER SHARK.pdf(34242 bytes) Ex 2 - Opposer's First Set of ROGs - TIGER SHARK.pdf(50468 bytes) Ex 3 - Opposer's First Set of RFAs - TIGER SHARK.pdf(57612 bytes) Ex 4 - 032616_RESPONSE_DOCS.pdf(52608 bytes) Ex 5 - 032618_RESPONSE_INTERROGATORIES.pdf(79119 bytes) Ex 6 - 032616_RESPONSE_ADMISSIONS.pdf(156184 bytes) Amended Notice of Opposition.pdf(38476 bytes)

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

HEINEKEN ASIA PACIFIC Pte. Ltd.,

Opposer,

v.

JONATHAN CLAYPOOL,

Applicant.

Opposition No. 91220927

Serial No: 86/394137

Mark: TIGER SHARK

MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION

HEINEKEN ASIA PACIFIC Pte. Ltd. (“Opposer”) hereby moves for leave to amend its Notice of Opposition to add an additional ground for opposition. Specifically, Opposer recently learned through discovery that Applicant lacks a bona fide intent to use the TIGER SHARK mark for beer in commerce. As this amendment is not futile and will cause no undue prejudice to Applicant, the Board should grant Opposer’s request.

STATEMENT OF RELEVANT FACTS

Opposer filed its initial Notice of Opposition in this matter on March 5, 2015. (Dkt. 1) Applicant Jonathan Claypool (“Applicant”) filed his Answer on April 11, 2015. (Dkt. 2) Thereafter, the parties attempted to negotiate settlement of this matter, seeking several joint suspensions of the deadlines. (*See generally* docket entries.) Having not been able to resolve the matter, on February 17, 2016, Opposer served discovery requests on Applicant, including requests for the production of documents, interrogatories, and requests for admission. (Exs. 1-3 to

Bukrinsky Decl.¹) On March 28, 2016—after the deadline for responding to discovery had passed—Applicant served its responses to Opposer’s discovery requests. (Exs. 4-6.)

Applicant’s responses to discovery made Opposer aware for the first time that Applicant had no *bona fide* intent to use the TIGER SHARK mark in commerce at the time he filed the application. (*See generally id.*) For example, Applicant admitted that he has no written business or marketing plans regarding his alleged intention to use the mark TIGER SHARK for beer, has made no preparations for manufacture of beer or use of the mark, and has contacted no manufacturers or distributors. (*Compare* Ex. 3 (Opposer’s Requests for Admissions) *with* Ex. 6 (Applicant’s Responses thereto), Nos. 29-33, 37-39, 44-46, 48-50.) Applicant produced no documents regarding his alleged plans to use the TIGER SHARK mark, and admitted that no such documents exist. (*Compare* Ex. 1 (Opposer’s Requests for Production of Documents and Things) *with* Ex. 4 (Applicant’s Responses thereto), Nos. 5-17, 24-25.) Indeed, Applicant admitted that he has taken no steps **to date** to use the TIGER SHARK mark and that he “does not have any immediate plans as yet to market or otherwise refer to products to be offered for sale under the Tiger Shark mark.” (*Compare* Ex. 2 (Opposer’s Interrogatories) No. 7 *with* Ex. 5 (Applicant’s Responses thereto) No. 7.)

ARGUMENT

“Leave to amend pleadings must be freely given when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party.” *Hurley Intl. LLC v. Volta*, 82 U.S.P.Q.2d 1339, 1341 (TTAB 2007). *See also* Fed. R. Civ. P. 15(a); TBMP § 507.02. Thus, the Board will grant leave to amend where the amendment is not futile, and will not unduly prejudice opposing party—even where the amendment alleges a claim

¹ All exhibits referenced herein are exhibits to the Bukrinsky Declaration, submitted herewith.)

different from that plead in the original complaint. *Hurley*, 82 U.S.P.Q.2d at 1341; *Boral Ltd. v. FMC Corp.*, 59 U.S.P.Q.2d 1701, 1702 (TTAB 2000). In particular, the Board regularly grants leave to amend when leave is sought prior to the start of the trial period, and when the new allegations are based on information learned through discovery. *See, e.g., Hurley*, 82 U.S.P.Q.2d at 1341 (no prejudice to applicant where additional ground for opposition added prior to trial period); *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 U.S.P.Q.2d 1503, 1507-08 (TTAB 1993) (allowing opposer to add claim that applicant did not have a bona fide intention to use the mark in commerce after the facts supporting this claim were learned through discovery); *Montblanc-Simplo GmbH v. United Brands Int'l, Inc.*, Opp. No. 91185637, 2009 WL 4086591, at *2 (TTAB Sept. 29, 2009) (same—allowing amendment 3 weeks after opposer learned of new grounds); *Combe Inc. v. Adams*, Opp. No. 91194534, 2011 WL 13054733, at *2 (TTAB Sept. 27, 2011) (same—permitting amendment after close of discovery and four months after receipt of the relevant discovery responses); *Sturgis Motorcycle Rally, Inc. v. Farrokhi*, Opp. No. 91202020, 2013 WL 11247190, at *3 (TTAB Aug. 12, 2013) (same).

Commodore and its progeny provide clear precedent for Opposer's motion. 26 U.S.P.Q.2d at 1507. Opposer received Applicant's responses to its discovery requests on March 28, 2016. In those responses, Applicant admitted that it has no written business or marketing plans regarding his alleged intention to use the mark TIGER SHARK on beer, has made no preparations for such use, and has contacted no manufacturers or distributors. (*Compare* Ex. 3 with Ex. 6 at Nos. 29-33, 37-39, 44-46, 48-50.) Applicant has produced no documents regarding his alleged plans to use the TIGER SHARK mark, and has indeed admitted that no such documents exist. (*Compare* Ex. 1 with Ex. 4 at Nos. 5-17, 24-25.) Furthermore, in response to Opposer's Interrogatory asking that Applicant:

Identify and fully describe Applicant's business plans for advertising, distributing and selling Applicant's Goods under Applicant's Mark, including all geographic locations, trade channels and advertising mediums where you use and intend to use Applicant's Mark (Ex. 2, No. 7)

Applicant responded as follows:

Applicant **does not have any immediate plans as yet to market or otherwise refer to products to be offered for sale under the Tiger Shark mark**, but applicant intends to market and sell beer under the mark in approximately 2 to 3 years starting in the US, in California. **No business plan has been drafted to date or other activities undertaken with regards to the Tiger Shark mark.** (Ex. 5, No. 7) (emphasis added).

The evidence stated above is sufficient to demonstrate that Opposer's request for leave to plead that Applicant lacks bona fide intent to use the mark is not futile. *See, e.g., Commodore*, 26 U.S.P.Q.2d at 1507 (same amendment permitted based on the fact that applicant lacked any documents showing intent to use the mark); *Montblanc-Simplo*, 2009 WL 4086591, at *2 (same); *Combe*, 2011 WL 13054733, at *2 (same). *See also Research in Motion Ltd. v. NBOR Corp.*, 92 U.S.P.Q.2d 1926, 2009 WL 4694941, *4 (TTAB 2009) ("The absence of any documentary evidence on the part of an applicant regarding such intent constitutes objective proof that is sufficient to prove that the applicant lacks a bona fide intention to use its mark in commerce.").

Further, the amendment is timely because it is based on evidence recently learned through discovery: Prior to receiving Applicant's discovery responses, Opposer had no basis to know that Applicant had no bona fide intent to use the mark when Applicant filed the application. *Montblanc-Simplo*, 2009 WL 4086591, at *2 (granting motion to amend to add new ground learned in discovery 3 weeks earlier); *Combe*, 2011 WL 13054733, at *2 (granting motion to amend to add new ground learned in discovery 4 months earlier). Finally, there is no prejudice to Applicant as a result of the newly alleged ground,

because the trial period has not yet commenced. *Hurley*, 82 U.S.P.Q.2d at 1341; *see also Commodore*, 26 U.S.P.Q.2d at 1506.

For the foregoing reasons, the Board should permit Opposer to file the Amended Notice of Opposition, submitted herewith.

Respectfully submitted,

HEINEKEN ASIA PACIFIC Pte. Ltd.

Dated: April 14, 2016

By: /John J. Dabney/
John J. Dabney
Katie Bukrinsky
McDERMOTT WILL & EMERY LLP
500 North Capitol Street, NW
Washington, D.C. 20001
Telephone: (202) 756-8000
Facsimile: (202) 756-8087
jdabney@mwe.com
kbukrinsky@mwe.com

Attorneys for Opposer

CERTIFICATE OF SERVICE

Opposer HEINEKEN ASIA PACIFIC Pte. Ltd., by and through its attorneys, hereby certifies that a copy of this MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION has been served upon Applicant on this 14th day of April, 2016, by Email at the following address:

Jonathan A. Claypool
17062 Murphy Ave.
Irvine, CA 92614
JClaypool@zymoresearch.com

/ Katie Bukrinsky/
Katie Bukrinsky
McDERMOTT WILL & EMERY LLP
Attorney for Opposer

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

HEINEKEN ASIA PACIFIC Pte. Ltd.,

Opposer,

v.

JONATHAN CLAYPOOL,

Applicant.

Opposition No. 91220927

Serial No: 86/394137

Mark: TIGER SHARK

**DECLARATION OF KATIE BUKRINSKY IN SUPPORT OF OPPOSER'S MOTION
FOR LEAVE TO AMEND ITS NOTICE OF OPPOSITION**

I, Katie Bukrinsky, do hereby declare under penalty of perjury as follows:

1. I am over twenty-one years of age and competent to make the following statements.
2. I am a member of the Virginia Bar and an associate in the law firm of McDermott Will & Emery LLP. I am an attorney for Opposer Heineken Asia Pacific Pte., Ltd. ("Opposer").
3. I have personal knowledge of the facts set forth in this Declaration and the authenticity of the documents attached herein and, if called to testify as a witness, I can and will testify to these facts in a court of law.
4. Exhibit 1 to my Declaration is a true and correct copy of Opposer's Requests for Production of Documents and Things, served on Applicant Jonathan Claypool ("Applicant") by Email on February 17, 2016.
5. Exhibit 2 to my Declaration is a true and correct copy of Opposer's First Set of Interrogatories, served on Applicant by Email on February 17, 2016.
6. Exhibit 3 to my Declaration is a true and correct copy of Opposer's First Set of Requests for Admission, served on Applicant by Email on February 17, 2016.

7. Exhibit 4 to my Declaration is a true and correct copy of Applicant's Response to Opposer's First Request for Production of Documents and Things, served by Applicant on March 28, 2016—after the deadline for responding had passed.

8. Exhibit 5 to my Declaration is a true and correct copy of Applicant's Response to Opposer's First Interrogatories, served by Applicant on March 28, 2016—after the deadline for responding had passed.

9. Exhibit 6 to my Declaration is a true and correct copy of Applicant's Response to Opposer's First Request for Admissions, served by Applicant on March 28, 2016—after the deadline for responding had passed.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

April 14, 2016

/s/Katie Bukrinsky

KATIE BUKRINSKY

EXHIBIT 1

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

HEINEKEN ASIA PACIFIC Pte. Ltd.,

Opposer,

v.

JONATHAN CLAYPOOL,

Applicant.

Opposition No. 91220927

Serial No: 86/394137

Mark: TIGER SHARK

**OPPOSER'S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Fed. R. Civ. P. 34, Opposer Heineken Asia Pacific Pte. Ltd. ("Opposer") requests that Applicant Jonathan Claypool ("Applicant") produce all documents and things responsive to Opposer's First Set of Requests for Production of Documents and Things ("Requests") within thirty (30) days of service of these Requests for inspection and copying at the law offices of McDermott Will & Emery LLP, 500 North Capitol Street, N.W., Washington, DC 20001, or at some other mutually agreeable location.

INSTRUCTIONS AND DEFINITIONS

A. "Applicant" means Applicant Jonathan Claypool, the owner of Application Serial No. 86/394137, as well as his past or present servants, employees, in-house and outside attorneys, accountants, consultants, affiliates, subsidiaries, or other persons or entities acting on his behalf.

B. "Applicant's Mark" means the mark TIGER SHARK, whether alone or in combination with any other term(s) or design(s), shown in Serial No. 86/394137.

**OPPOSER'S FIRST SET OF
REQUESTS FOR PRODUCTION
OF DOCUMENTS AND THINGS**

C. “Applicant’s Goods” means beer sold under Applicant’s Mark.

D. “Opposer” means Heineken Asia Pacific Pte. Ltd., the opposer in Opposition No. 91220927, and all of its owners, officers, directors, agents, servants, employees, in-house and outside attorneys, accountants, consultants, corporate parents, affiliates, subsidiaries, or other persons or entities acting on its behalf.

E. “Opposer’s TIGER Marks” means the mark TIGER whether alone or in combination with any other term(s) and/or design(s).

F. “Opposer’s Products” means beer sold under Opposer’s TIGER Marks.

G. “Document” is synonymous in meaning and equal in scope to the usage of the term “documents or electronically stored information” in Federal Rule of Civil Procedure 34(a). Drafts and non-identical duplicates constitute separate documents. Attachments, exhibits, appendices, schedules, and enclosures to documents are considered part of the same document.

H. “Thing” refers to any tangible object other than a document.

I. “Concerning” means constituting, comprising, relating to, referring to, reflecting, evidencing, or in any way relevant within the meaning of Federal Rule of Civil Procedure 26(b)(1).

J. “Including” means including but not limited to.

K. “Person” or “persons” means (a) natural persons; (b) legal entities, including, without limitation, corporations, partnerships, firms, associations, professional corporations, and proprietorships; and (c) governmental bodies or agencies.

L. “And” or “or” shall be construed conjunctively or disjunctively as necessary in order to make the request inclusive rather than exclusive.

M. “U.S. Commerce” or “United State Commerce” means commerce which the United States may regulate.

N. The past tense includes the present tense, and vice-versa. The singular includes the plural, and vice-versa. The male pronoun includes the female pronoun, and vice-versa.

**OPPOSER’S FIRST SET OF
REQUESTS FOR PRODUCTION
OF DOCUMENTS AND THINGS**

O. These requests seek the production of documents and things as of the date on which Applicant responds; however, these requests shall be deemed continuing and must be supplemented as required by the Federal Rules of Civil Procedure. If, after producing documents and things, Applicant becomes aware of any further document(s), thing(s), or information responsive to these Requests, Applicant is required to produce such additional documents, things, and/or information to Opposer promptly upon acquiring possession of such.

P. If any document or thing is not produced based on a claim of privilege or Applicant contends a document or thing is otherwise excludable from discovery, Applicant shall provide Opposer with a privilege log that conforms with Federal Rule of Civil Procedure 26(b)(5).

Q. If Applicant objects to any request as overly broad or unduly burdensome, Applicant shall produce those documents and/or things which are unobjectionable and specifically identify the respect in which the request is allegedly overly broad or burdensome, respectively.

REQUESTS FOR PRODUCTION

REQUEST NO. 1 All documents concerning the creation and design of Applicant's Mark, including, without limitation, all marketing reports and all correspondence with any consultant, design firm, advertising agency, exhibitor, supplier, printer, and the like, regarding the creation or design of Applicant's Mark.

REQUEST NO. 2 All documents that Applicant created, reviewed or consulted in connection with the adoption of Applicant's Mark, including all documents concerning the reasons why Applicant adopted Applicant's Mark, documents referring to any alternative marks that Applicant considered adopting in lieu of Applicant's Mark and all minutes and notes from any meetings or communications where any of the foregoing topics were discussed.

REQUEST NO. 3 All documents concerning any search or evaluation of any documents or records conducted by or on behalf of Applicant to determine whether any person had used or sought registration of any name or mark similar to Applicant's Mark, or whether the use or registration of Applicant's Mark might conflict with the rights of any person, including all trademark search reports and trademark use investigations.

REQUEST NO. 4 Samples of each label and packaging bearing Applicant's Mark.

REQUEST NO. 5 All documents concerning the creation of any labels and packaging bearing Applicant's Mark, including all communications with any design firm or advertising agency.

REQUEST NO. 6 Documents sufficient to identify each product offered or intended to be offered under Applicant's Mark.

REQUEST NO. 7 All documents concerning Applicant's first use of Applicant's Mark anywhere.

REQUEST NO. 8 All documents concerning the advertising and marketing of Applicant's Goods under Applicant's Mark, including samples of all advertising and marketing.

REQUEST NO. 9 All documents regarding any experience that Applicant has in the beer industry.

REQUEST NO. 10 All documents concerning the sale and distribution, or intended sale and distribution, of Applicant's Goods under Applicant's Mark, including all purchase

orders and sales receipts and the like and all documents sent to or received from any person relating to the sale or potential sale of goods under Applicant's Mark.

REQUEST NO. 11 All documents and things concerning the channels of trade through which Applicant sells, advertises or promotes its products, or through which Applicant intends to sell, advertise or promote its products and services, including, without limitation, identification of all retail stores, online retailers and other retail channels in which Applicant has sold or intends to sell goods under Applicant's Mark.

REQUEST NO. 12 All documents concerning business plans for selling, distributing or advertising Applicant's Goods bearing Applicant's Mark.

REQUEST NO. 13 All documents concerning business plans for manufacturing or otherwise creating Applicant's Goods bearing Applicant's Mark.

REQUEST NO. 14 All COLA applications and certifications, and/or other licensing applications or certifications – whether with the federal government or any state agency – for Applicant's Goods bearing Applicant's Mark.

REQUEST NO. 15 Documents sufficient to show the amount of money that has been spent on creating Applicant's Goods.

REQUEST NO. 16 Documents sufficient to show the revenues received by Applicant on a monthly basis from the sales of Applicant's Goods, commencing from Applicant's first sale.

REQUEST NO. 17 All documents and things concerning the purchasers or intended purchasers of Applicant's Goods under Applicant's Mark, including, without limitation, all

**OPPOSER'S FIRST SET OF
REQUESTS FOR PRODUCTION
OF DOCUMENTS AND THINGS**

documents concerning the age, income level, educational level and gender of actual and potential purchasers of Applicant's Goods under Applicant's Mark.

REQUEST NO. 18 All documents and things concerning Opposer or Opposer's Mark or Products, including, without limitation, any document received from or sent to any person referring to Opposer or Opposer's Mark or Products, and any notes, letters and correspondence referring to Opposer or Opposer's Mark or Products.

REQUEST NO. 19 All documents sent to and received from Opposer and all notes concerning all such communications.

REQUEST NO. 20 All documents concerning any investigation, trademark search, or other inquiry made by Applicant concerning Opposer's trademark rights, including without limitation, all documents referring or relating to the results of said investigation, trademark search or other inquiry.

REQUEST NO. 21 All documents and things concerning any similarity between Opposer's Mark and Applicant's Mark, including, without limitation, all documents relating to any statement, comment or communication from any person regarding the similarity between Opposer's Mark and Applicant's Mark.

REQUEST NO. 22 All documents concerning any time when any person evidenced any question or confusion as whether Applicant's Goods were produced or licensed by, or affiliated with, Opposer or Opposer's TIGER Marks.

REQUEST NO. 23 All documents concerning Applicant's registration and/or use of any domain name containing the word "TIGER," alone or in combination with any other terms,

**OPPOSER'S FIRST SET OF
REQUESTS FOR PRODUCTION
OF DOCUMENTS AND THINGS**

numbers or letters, including print-outs showing any content that has ever appeared on such web sites.

REQUEST NO. 24 All documents concerning the manufacturing of Applicant's Goods sold or intended to be sold under Applicant's Mark, including all documents that you have sent to or received from any manufacturer or brewer concerning Applicant's Goods.

REQUEST NO. 25 Documents sufficient to identify all persons employed by Applicant or otherwise associated with creating, marketing, or distributing Applicant's Goods, as well as their job duties and responsibilities.

REQUEST NO. 26 Documents sufficient to identify every person that has sold or that intends to sell Applicant's Goods bearing Applicant's Mark, including the name, address and telephone number of all retailers and distributors.

REQUEST NO. 27 All documents and things concerning this Opposition proceeding, including, without limitation, all documents that Applicant sent to any person regarding this Opposition, including, without limitation, a representative, agent or attorney, and all documents that Applicant received from any person concerning this Opposition, including, without limitation, a representative, agent or attorney.

REQUEST NO. 28 All documents and things that Applicant intends to rely upon as evidence during trial of this Opposition proceeding.

REQUEST NO. 29 All documents and things concerning any allegation in Opposer's Notice of Opposition, including all documents that support the denial of any allegation in Opposer's Notice of Opposition.

**OPPOSER'S FIRST SET OF
REQUESTS FOR PRODUCTION
OF DOCUMENTS AND THINGS**

REQUEST NO. 30 All documents and things concerning the responses in Applicant's Answer to Opposer's Notice of Opposition.

REQUEST NO. 31 All documents in your possession that contain Applicant's Mark.

REQUEST NO. 32 All documents and things that Applicant was required to identify in, or which Applicant consulted, referred to or relied upon in preparing or developing its responses to Opposer's First Set of Interrogatories.

HEINEKEN ASIA PACIFIC Pte. Ltd.,

Dated: February 17, 2016

By: /Katie Bukrinsky/
John J. Dabney
Katie Bukrinsky
McDERMOTT WILL & EMERY LLP
500 North Capitol Street, NW
Washington, D.C. 20001
Telephone: (202) 756-8000
Facsimile: (202) 756-8087
jdabney@mwe.com, kbukrinsky@mwe.com
Attorneys for Opposer

CERTIFICATE OF SERVICE

Opposer HEINEKEN ASIA PACIFIC Pte. Ltd., by and through its attorneys, hereby certifies that a copy of this FIRST SET OF DOCUMENT REQUESTS has been served upon Applicant on this 17th day of February, 2016, by email and First Class Mail at the following address:

Jonathan A. Claypool
17062 Murphy Ave.
Irvine, CA 92614
jclaypool@zymoresearch.com

/s/Katie Bukrinsky
Katie Bukrinsky
McDERMOTT WILL & EMERY LLP
Attorney for Opposer

EXHIBIT 2

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

HEINEKEN ASIA PACIFIC Pte. Ltd.,

Opposer,

v.

JONATHAN CLAYPOOL,

Applicant.

Opposition No. 91220927

Serial No: 86/394137

Mark: TIGER SHARK

OPPOSER’S FIRST SET OF INTERROGATORIES

Pursuant to Fed. R. Civ. P. 33, Opposer Heineken Asia Pacific Pte. Ltd. (“Opposer”) requests that Applicant Jonathan Claypool (“Applicant”) answer the following interrogatories fully, in writing and under oath, within thirty (30) days of service, and submit answers to the law offices of McDermott Will & Emery LLP, 500 North Capitol Street NW, Washington, DC 20001, or at some other mutually agreeable location.

INSTRUCTIONS AND DEFINITIONS

- A. “Applicant” means Applicant Jonathan Claypool, the owner of Application Serial No. 86/394137, as well as his past or present servants, employees, in-house and outside attorneys, accountants, consultants, affiliates, subsidiaries, or other persons or entities acting on his behalf.
- B. “Applicant’s Mark” means the mark TIGER SHARK, whether alone or in combination with any other term(s) or design(s), shown in Serial No. 86/394137.
- C. “Applicant’s Goods” means beer sold under Applicant’s Mark.

D. “Opposer” means Heineken Asia Pacific Pte. Ltd., the opposer in Opposition No. 91220927, and all of its owners, officers, directors, agents, servants, employees, in-house and outside attorneys, accountants, consultants, corporate parents, affiliates, subsidiaries, or other persons or entities acting on its behalf.

E. “Opposer’s TIGER Marks” means the mark TIGER whether alone or in combination with any other term(s) and/or design(s).

F. “Opposer’s Products” means beer sold under Opposer’s TIGER Marks.

G. “Document” is synonymous in meaning and equal in scope to the usage of the term “documents or electronically stored information’ in Federal Rule of Civil Procedure 34(a). Drafts and non-identical duplicates constitute separate documents. Attachments, exhibits, appendices, schedules, and enclosures to documents are considered part of the same document.

H. “Thing” refers to any tangible object other than a document.

I. “Concerning” means constituting, comprising, relating to, referring to, reflecting, evidencing, or in any way relevant within the meaning of Federal Rule of Civil Procedure 26(b)(1).

J. “Including” means including but not limited to.

K. “Person” or “persons” means (a) natural persons; (b) legal entities, including, without limitation, corporations, partnerships, firms, associations, professional corporations, and proprietorships; and (c) governmental bodies or agencies.

L. “And” or “or” shall be construed conjunctively or disjunctively as necessary in order to make the request inclusive rather than exclusive.

M. The past tense includes the present tense, and vice-versa. The singular includes the plural, and vice-versa. The male pronoun includes the female pronoun, and vice-versa.

N. As used herein, the term “identify” means:

(1) In the case of a person, to state:

- a. full name;
 - b. present or last known residence and business address and telephone numbers relating to each; and
 - c. occupation and business position held.
- (2) In the case of a company, to state:
- a. full name and legal form (*e.g.*, corporation, partnership, etc.) and where incorporated or formed, if applicable;
 - b. the address and principal place of business; and
 - c. the identity of the persons having knowledge of the matter with respect to which the company is identified.
- (3) In the case of a document, to state:
- a. the identity of the persons who prepared it, the senders and recipients, if any;
 - b. the title or a description of the general nature of its subject matter;
 - c. the date and manner of distribution and publication, if any;
 - d. the location of each copy and the identity of the present custodian or persons responsible for its filing or other disposition; and
 - e. the identity of the persons who can authenticate or identify it.
- (4) In the case of an act, circumstance, event, or omission, to state:
- a. a complete description of the act, circumstance, event, or omission;
 - b. when and where it occurred;
 - c. the identity of the persons performing said act (or, in the case of an omission, the identity of the persons failing to act) or involved in said

- event;
- d. the identity of all persons who have knowledge, information or belief about the act, circumstance, event or omission;
- e. when the act, circumstance, event or omission first became known; and
- f. the circumstances and manner in which such knowledge was first obtained.

O. These interrogatories seek responses as of the date on which Applicant responds; however, these interrogatories shall be deemed continuing and must be supplemented as required by the Federal Rules of Civil Procedure. If, after providing responses to these interrogatories, Applicant becomes aware of any further document(s), thing(s), or information responsive to these interrogatories, Applicant is required to serve upon Opposer such further responses promptly after Applicant has acquired additional documents, things, knowledge or information.

P. Any information concerning any oral communication withheld in responding to these interrogatories on the ground of privilege is to be identified by the persons involved in the communication, including the name of the person who made the communication, the recipients of the communication, job titles of all persons involved, the date the communication occurred, the subject matter of the communication, and the nature of the privilege claimed.

Q. Any document withheld in responding to these interrogatories on the ground of privilege is to be identified by authors, recipients, persons to whom copies were furnished, job titles of all of the foregoing, as well as the date and subject matter of each document, and the nature of the privilege claimed.

INTERROGATORIES

INTERROGATORY NO 1: Identify all persons involved in the selection, creation, or adoption of Applicant's Mark.

INTERROGATORY NO 2: Identify all persons involved in the decision to apply to register Applicant's Mark.

INTERROGATORY NO 3: Identify all persons involved or intending to be involved in designing, manufacturing, or creating Applicant's Goods under Applicant's Mark.

INTERROGATORY NO 4: Identify and fully describe how Applicant first learned of Opposer's TIGER Marks, including when and how you learned.

INTERROGATORY NO 5: Identify and fully describe all communications about Opposer or Opposer's TIGER Marks.

INTERROGATORY NO 6: Identify and fully describe the selection of Applicant's Mark, including the reasons this mark was selected, when it was selected, other marks that were considered, and any investigation or trademark search that was conducted for Applicant's Mark.

INTERROGATORY NO 7: Identify and fully describe Applicant's business plans for advertising, distributing and selling Applicant's Goods under Applicant's Mark, including all geographic locations, trade channels and advertising mediums where you use and intend to use Applicant's Mark.

INTERROGATORY NO 8: Identify and fully describe Applicant's business plans for manufacturing and producing Applicant's Goods under Applicant's Mark, including identifying the manufacturer(s) or producer(s) who will be involved in creating Applicant's Goods.

INTERROGATORY NO 9: If Applicant has sold goods under Applicant's Mark, identify the geographic location of each such sale, the date of each such sale, the type of good sold, and the revenues.

INTERROGATORY NO 10: Identify the actual and potential customers of Applicant's Goods under Applicant's Mark, including the demographics of such customers in terms of age, gender, income, education and the like.

INTERROGATORY NO 11: Identify and fully describe any verbal or written agreements concerning Applicant's Mark, including all licenses, assignments, co-existence agreements, partnership agreements, or joint venture agreements relating to Applicant's Mark.

INTERROGATORY NO 12: Identify and fully describe each instance where Applicant or any person acting on Applicant's behalf received a communication, written or oral, from any person which demonstrates or implies that that person believed that Applicant's Mark or Applicant's Goods were approved or sponsored by or connected, associated or affiliated in any way with Opposer or its TIGER Marks.

INTERROGATORY NO 13: Identify and fully describe why you contend the relevant public will not be confused by the registration and use of Applicant's Mark.

INTERROGATORY NO 14: Identify and fully describe the factual basis for each denial in Applicant's Answer in this Opposition (Dkt. No. 4).

HEINEKEN ASIA PACIFIC Pte. Ltd.,

Dated: February 17, 2016

By: /Katie Bukrinsky/
John J. Dabney
Katie Bukrinsky
McDERMOTT WILL & EMERY LLP
500 North Capitol Street, NW
Washington, D.C. 20001
Telephone: (202) 756-8000
Facsimile: (202) 756-8087
jdabney@mwe.com
kbukrinsky@mwe.com

Attorneys for Opposer

CERTIFICATE OF SERVICE

Opposer HEINEKEN ASIA PACIFIC Pte. Ltd., by and through its attorneys, hereby certifies that a copy of this FIRST SET OF INTERROGATORIES has been served upon Applicant on this 17th day of February, 2016, by First Class Mail and email at the following address:

Jonathan A. Claypool
17062 Murphy Ave.
Irvine, CA 92614
jclaypool@zymoresearch.com

/s/Katie Bukrinsky
Katie Bukrinsky
McDERMOTT WILL & EMERY LLP
Attorney for Opposer

EXHIBIT 3

**IN THE United States PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

HEINEKEN ASIA PACIFIC Pte. Ltd.,

Opposer,

v.

JONATHAN CLAYPOOL,

Applicant.

Opposition No. 91220927

Serial No: 86/394137

Mark: TIGER SHARK

OPPOSER’S FIRST SET OF REQUESTS FOR ADMISSION

Pursuant to Fed. R. Civ. P. 36, Opposer Heineken Asia Pacific Pte. Ltd. (“Opposer”) requests that Applicant Jonathan Claypool (“Applicant”) answer the following requests in writing within thirty (30) days of service, and submit answers to the law offices of McDermott Will & Emery LLP, 500 North Capitol Street NW, Washington, DC 20001, or at some other mutually agreeable location.

INSTRUCTIONS AND DEFINITIONS

- A. “Applicant” means Applicant Jonathan Claypool, the owner of Application Serial No. 86/394137, as well as his past or present servants, employees, in-house and outside attorneys, accountants, consultants, affiliates, subsidiaries, or other persons or entities acting on his behalf.
- B. “Applicant’s Mark” means the mark TIGER SHARK, whether alone or in combination with any other term(s) or design(s), shown in Serial No. 86/394137.
- C. “Applicant’s Goods” means beer sold under Applicant’s Mark.

D. “Opposer” means Heineken Asia Pacific Pte. Ltd., the opposer in Opposition No. 91220927, and all of its owners, officers, directors, agents, servants, employees, in-house and outside attorneys, accountants, consultants, corporate parents, affiliates, subsidiaries, or other persons or entities acting on its behalf.

E. “Opposer’s TIGER Marks” means the mark TIGER whether alone or in combination with any other term(s) and/or design(s).

F. “Opposer’s Products” means beer sold under Opposer’s TIGER Marks.

G. “Document” is synonymous in meaning and equal in scope to the usage of the term “documents or electronically stored information” in Federal Rule of Civil Procedure 34(a). Drafts and non-identical duplicates constitute separate documents. Attachments, exhibits, appendices, schedules, and enclosures to documents are considered part of the same document.

H. “Thing” refers to any tangible object other than a document.

I. “Concerning” means constituting, comprising, relating to, referring to, reflecting, evidencing, or in any way relevant within the meaning of Federal Rule of Civil Procedure 26(b)(1).

J. “Including” means including but not limited to.

K. “Person” or “persons” means (a) natural persons; (b) legal entities, including, without limitation, corporations, partnerships, firms, associations, professional corporations, and proprietorships; and (c) governmental bodies or agencies.

L. “And” or “or” shall be construed conjunctively or disjunctively as necessary in order to make the request inclusive rather than exclusive.

M. The past tense includes the present tense, and vice-versa. The singular includes the plural, and vice-versa. The male pronoun includes the female pronoun, and vice-versa.

N. Answers to the following requests must specifically admit or deny the matter set forth in the request or set forth in detail the reasons why you cannot truthfully admit or deny the matter.

O. When good faith requires you to qualify an answer or deny only a part of a matter in a request, the answer must specify the part admitted and qualify or deny the remainder.

P. Lack of information or knowledge may not be given as a reason for failure to admit or deny, unless you state that you have made reasonable inquiries and that the information known or readily obtainable by you is insufficient to enable you to admit or deny the request.

Q. All objections shall be set forth with specificity and shall include a brief statement of the grounds for such objections.

REQUESTS FOR ADMISSION

REQUEST NO 1: Admit that Opposer sells beer under its TIGER Marks in the United States.

REQUEST NO 2: Admit that Opposer has sold beer under the TIGER Marks in the United States continuously for decades.

REQUEST NO 3: Admit that Opposer sold beer under the TIGER Marks in the United States before Applicant filed its application for Applicant's Mark.

REQUEST NO 4: Admit that Opposer sold beer under the TIGER Marks in the United States before Applicant first used Applicant's Mark.

REQUEST NO 5: Admit that Opposer sold beer under the TIGER Marks in the United States before Applicant first adopted Applicant's Mark.

REQUEST NO 6: Admit that Opposer owns a registration for the word mark TIGER for beer, U.S. Reg. No. 3,294,199.

REQUEST NO 7: Admit that Opposer owned U.S. Reg. No. 3,294,199 before Applicant adopted Applicant's Mark.

REQUEST NO 8: Admit that Opposer owns a registration for TIGER and design for beer, U.S. Reg. No. 3,318,461.

REQUEST NO 9: Admit that Opposer owned U.S. Reg. No. 3,318,461 before Applicant adopted Applicant's Mark.

REQUEST NO 10: Admit that Opposer's TIGER Marks are inherently distinctive.

REQUEST NO 11: Admit that Opposer's TIGER Marks are strong.

REQUEST NO 12: Admit that Opposer's TIGER Marks do not describe an attribute of Opposer's Products.

REQUEST NO 13: Admit that Opposer's TIGER Marks do not suggest an attribute of Opposer's Products.

REQUEST NO 14: Admit that Applicant's Mark is similar to Opposer's TIGER Marks.

REQUEST NO 15: Admit that Applicant's Mark is confusingly similar to Opposer's TIGER Marks.

REQUEST NO 16: Admit that Applicant's Mark and Opposer's TIGER Marks both contain the word TIGER.

REQUEST NO 17: Admit that there is a likelihood of confusion between Applicant's Mark and Opposer's TIGER Marks.

REQUEST NO 18: Admit that before Applicant filed to register Applicant's Mark, consumers associated the mark TIGER with Opposer's Products.

REQUEST NO 19: Admit that before Applicant filed to register Applicant's Mark, consumers knew that Opposer marketed beer under the mark TIGER.

REQUEST NO 20: Admit that Applicant knew of Opposer prior to adopting Applicant's Mark.

REQUEST NO 21: Admit that Applicant knew of Opposer's Products prior to adopting Applicant's Mark.

REQUEST NO 22: Admit that Applicant knew of Opposer prior to filing a United States trademark application for registration of Applicant's Mark in the United States.

REQUEST NO 23: Admit that Applicant had drank Opposer's TIGER-branded beer at any time prior to adopting Applicant's Mark.

REQUEST NO 24: Admit that Applicant had seen Opposer's advertising for TIGER-branded products at any time prior to adopting Applicant's Mark.

REQUEST NO 25: Admit that Applicant had seen Opposer's TIGER-branded products at any time prior to adopting Applicant's Mark.

REQUEST NO 26: Admit that Applicant knew of Opposer's TIGER Marks prior to adopting Applicant's Mark.

REQUEST NO 27: Admit that Applicant was aware of at least one of Opposer's registrations for its TIGER Marks prior to filing his application for Applicant's Mark.

REQUEST NO 28: Admit that Applicant has never sold beer under Applicant's Mark.

REQUEST NO 29: Admit that Applicant has no written plans to sell beer under Applicant's Mark.

REQUEST NO 30: Admit that Applicant has no written plans for producing or manufacturing Applicant's Goods.

REQUEST NO 31: Admit that Applicant has not discussed with any distributor the distribution of Applicant's Goods.

REQUEST NO 32: Admit that Applicant has no business plans to sell Applicant's Goods.

REQUEST NO 33: Admit that Applicant has done no advertising for Applicant's Goods.

REQUEST NO 34: Admit that Applicant intends to sell beer under Applicant's Mark.

REQUEST NO 35: Admit that both parties sell or intend to sell beer under their marks.

REQUEST NO 36: Admit that the parties' goods are identical.

REQUEST NO 37: Admit that Applicant's Goods are likely to be sold in retail stores.

REQUEST NO 38: Admit that Applicant's Goods are likely to be sold in liquor stores.

REQUEST NO 39: Admit that Applicant's Goods are likely to be sold in bars.

REQUEST NO 40: Admit that the parties' goods are likely to travel in the same retail channels.

REQUEST NO 41: Admit that Applicant's Goods are marketed to the general public.

REQUEST NO 42: Admit that Applicant's Goods would be marketed to the general public.

REQUEST NO 43: Admit that Opposer's Products are marketed to the general public.

REQUEST NO 44: Admit that the parties' goods are or will be marketed to the same consumers.

REQUEST NO 45: Admit that the parties' goods are or will be advertised through the same media.

REQUEST NO 46: Admit that the parties' goods are or will be sold in the same trade channels.

REQUEST NO 47: Admit that the parties' goods are or will be sold in overlapping trade channels.

REQUEST NO 48: Admit that Applicant's Goods are relatively cheap.

REQUEST NO 49: Admit that Applicant's Goods are priced at less than \$10 a unit.

REQUEST NO 50: Admit that Applicant's Goods are priced at less than \$20 a unit.

REQUEST NO 51: Admit that Opposer's Products are relatively cheap.

REQUEST NO 52: Admit that consumers exercise a low degree of care when purchasing beer.

REQUEST NO 53: Admit that Opposer's Products are sold in retail stores.

REQUEST NO 54: Admit that Opposer's Products are sold in liquor stores.

REQUEST NO 55: Admit that Opposer's Products are sold in bars.

REQUEST NO 56: Admit that customers encountering Applicant's Mark are likely to believe that such mark is associated with Opposer.

REQUEST NO 57: Admit that prospective customers encountering Applicant's Mark are likely to believe that such mark is associated with Opposer.

REQUEST NO 58: Admit that customers and prospective customers encountering Applicant's Goods under Applicant's Mark are likely to believe that such goods are sponsored by Opposer.

REQUEST NO 59: Admit that customers and prospective customers encountering Applicant's Goods under Applicant's Mark are likely to believe that such goods are licensed by Opposer.

REQUEST NO 60: Admit that Opposer's TIGER Marks are well-known in the United States.

REQUEST NO 61: Admit that Applicant applied to register Applicant's Mark because he knew of Opposer's TIGER Marks.

REQUEST NO 62: Admit that Applicant applied to register Applicant's Mark because he wanted to capitalize on Opposer's goodwill.

REQUEST NO 63: Admit that Applicant applied to register Applicant's Mark because he wanted to associate Applicant's Goods with Opposer.

REQUEST NO 64: Admit that Applicant applied to register Applicant's Mark because he wanted to associate Applicant's Goods with Opposer's TIGER Marks.

REQUEST NO 65: Admit that Applicant applied to register Applicant's Mark because he wanted consumers to believe that Applicant's Goods were approved by Opposer.

REQUEST NO 66: Admit that Applicant applied to register Applicant's Mark because he wanted consumers to believe that Applicant's Goods were licensed by Opposer.

REQUEST NO 67: Admit that there is a likelihood of confusion between Applicant's Mark and Opposer's Marks.

HEINEKEN ASIA PACIFIC Pte. Ltd.,

Dated: February 17, 2016

By: Katie Bukrinsky/
John J. Dabney
Katie Bukrinsky
McDERMOTT WILL & EMERY LLP
500 North Capitol Street, NW
Washington, D.C. 20001
Telephone: (202) 756-8000
Facsimile: (202) 756-8087
jdabney@mwe.com
kbukrinsky@mwe.com

Attorneys for Opposer

CERTIFICATE OF SERVICE

Opposer HEINEKEN ASIA PACIFIC Pte. Ltd., by and through its attorneys, hereby certifies that a copy of this FIRST SET OF INTERROGATORIES has been served upon Applicant on this 17th day of February, 2016, by First Class Mail and email at the following address:

Jonathan A. Claypool
17062 Murphy Ave.
Irvine, CA 92614
jclaypool@zymoresearch.com

/s/Katie Bukrinsky
Katie Bukrinsky
McDERMOTT WILL & EMERY LLP
Attorney for Opposer

EXHIBIT 4

Jonathan A. Claypool
17062 Murphy Ave.
Irvine, CA 92614

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

HEINEKEN ASIA PACIFIC, PTE., LTD. Opposer, vs. JONATHAN A CLATPOOL, Applicant	OPPOSITION NO.: 91220927 SERIAL NO: 86394137 (TIGER SHARK)

Response to Opposer's first request for production of documents and things:

Applicant has provided documents in response to the requests or has indicated otherwise.

Request 1: Applicant provides documents related to the creation of the mark tiger Shark.

- Biological Kingdoms schematic
- Application file documents

Request 2: None.

Request 3: TESS Searches for Tiger Shark.

Request 4: None.

Request 5: None.

Request 6: None.

Request 7: None.

Request 8: None.

Request 9: None. Applicant has sold beer under the Underground mark in conducting market research but has lost and is unable to locate any documents related thereto.

Request 10: None.

Request 11: None.

Request 12: None.

Request 13: None.

Request 14: None.

Request 15: None.

Request 16: None.

Request 17: None.

Request 18: Applicant searched Opposer after receiving the notice for the opposition and provides the document related thereto.

Request 19: Applicant includes the settlement agreement but does not have notes related thereto other than emails from Opposer's counsel.

Request 20: None.

Request 21: None.

Request 22: None.

Request 23: None.

Request 24: None.

Request 25: None.

Request 26: None other than Applicant.

Request 27: None other than the settlement agreement and correspondence with Opposer's counsel.

Request 28: None other than the files of the Applicant's and Opposer's respective marks or provided by Opposer in response to Applicants requests for disclosures.

Request 29: None other than the answer or in documents provided under other requests.

Request 30: None other than the answer or in documents provided under other requests.

Request 31: See request 18 and google search.

Request 32: None other than those provided in response to the other requests.

Date: March 26, 2016.

/Jonathan A Claypool/

Jonathan A Claypool
17062 Murphy Ave.
Irvine, CA 926151
Phone; 949-679-1190, Ext 284.
Fax: 949-266-9452

Our Ref. No: 1626-TM

Certificate of Transmission and Service

I certify that the foregoing Answer to the Consolidated Notice of Opposition is being electronically filed with the Trademark Trial and Appeal Board and that the foregoing Answer to the Consolidated Notice of Opposition is also being sent via first class mail Opposer's attorney of record, Katie Bukrinsky, McDermott, Will & Emory, LLP, 500 North Capitol Street NW Washington DC 2001.

Date: March 28, 2016

/Jonathan A Claypool/

Jonathan A. Claypool

EXHIBIT 5

Jonathan A. Claypool
17062 Murphy Ave.
Irvine, CA 92651

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

HEINEKEN ASIA PACIFIC, PTE, LTD Opposer, vs. JONATHAN A CLATPOOL, Applicant	OPPOSITION NO.: 91220927 SERIAL NO: 86394137 (TIGERT SHARK)
--	--

Response to Opposer's first interrogatories:

Interrogatory Number 1:

Applicant is Jonathan A Claypool who maintains an office at 17062 Murphy Ave., Irvine, CA 92614 (business phone 949-679-1190; cell: 949-293-6278). Applicant's residence is 68 Southwind, Aliso Viejo, CA 92656. Applicant is an attorney and general counsel of Zymo Research Corp.

Interrogatory Number 2: Jonathan A Claypool, see above.

Interrogatory Number 3: Jonathan A Claypool, see above.

Interrogatory Number 4: Applicant first learned of Opposer's marks upon receiving Opposer's Notice of Opposition.

Interrogatory Number 5: No substantive communication have occurred with third parties other than with Opposer's counsel. Applicant has mentioned to friends and acquaintances that the opposition was filed and that in his opinion there is no real basis for opposing applicant's mark.

Interrogatory Number 6: Applicant solely conceived of the Tiger Shark mark approximately 1-2 years before filing on September 13, 2014. The Tiger Shark mark was selected since it evoked a unique commercial impression and based that no potentially conflicting marks for international class 032, 033 or for beer or other alcoholic beverages (Spirits wine) was found USPTO searches with TESS.

Interrogatory Number 7: Applicant does not have any immediate plans as yet to market or otherwise refer to products to be offered for sale under the Tiger Shark mark, but applicant intends to market and sell beer under the mark in approximately 2 to 3 years starting in the US, in California. No business plan has been drafted to date or other activities undertaken with regards to the Tiger Shark mark.

Interrogatory Number 8

Applicant intends to start a small brewery and tap room system. No specifics are yet in place.

Interrogatory Number 9: Applicant has made no sales for products under the Tiger Shark mark by applicant.

Interrogatory Number 10: Potential customers for products sold under Applicant's Tiger Shark mark would be people over 21 years of age, likely located in Southern California.

Interrogatory Number 11: No agreement oral or written have been entered into regarding Applicant's Tiger Shark mark

Interrogatory Number 12: Applicant is unaware of any communications from any person regarding that they believed Applicant's mark was sponsored or connected to Opposer's marks (Tiger; Tiger and design). No such communications have occurred.

Interrogatory 13: Applicant contends that the respective marks differ on their faces and overall commercial impression. Thus Applicant's mark Tiger Shark is distinct from Opposer's Tiger marks precluding any likelihood of confusion. The mark Tiger Shark evokes a shark found in tropical waters while Tiger evokes the largest of the cat species and so it follows they are entirely different when viewed objectively.

In other words when an average purchaser of beer thinks of a Tiger Shark they do not think of Tiger based on applicant's conclusion after reviewing the different habitat and appearance of each.

Interrogatory Number 14:

9. See answer to Interrogatory 13.

11. See answer to Interrogatory 13.

12. Applicant use and registration of Tiger Shark will not interfere with Opposer's Tiger Marks, and damage Opposer, its business and its goodwill since average consumers are unlikely to become confused as to source or to even encounter products together.

Our Ref. No: 1626-TM

Date: March 26, 2016.

/Jonathan A Claypool/

**Jonathan A Claypool
17062 Murphy Ave.
Irvine, CA 926151
Phone; 949-679-1190, Ext 284.
Fax: 949-266-9452**

Our Ref. No: 1626-TM

Certificate of Transmission and Service

I certify that the foregoing Answer to the Consolidated Notice of Opposition is being electronically filed with the Trademark Trial and Appeal Board and that the foregoing Answer to the Consolidated Notice of Opposition is also being sent via first class mail Opposer's attorney of record, Katie Bukrinsky, McDermott, Will & Emory, LLP, 500 North Capitol Street NW Washington DC 2001.

Date: March 28, 2016

/Jonathan A Claypool/

Jonathan A. Claypool

EXHIBIT 6

Jonathan A. Claypool
17062 Murphy Ave.
Irvine, CA 92614

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

HEINEKEN ASIA PACIFIC, PTE, LTD. Opposer, vs. JONATHAN A CLAPOOL, Applicant	OPPOSITION NO.: 91220927 SERIAL NO: 86394137 (TIGER SHARK)

Response to Opposer's first request for admissions:

Request 1: Applicant admits Opposer sells beer under its Tiger marks in the US.

Request 2: Applicant admits Opposer has sold beer under its Tiger marks in the US for several years.

Request 3: Applicant admits Opposer has sold beer under its Tiger marks in the US before Applicant's application.

Request 4: Applicant has not used its mark and so denies.

Request 5: Applicant admits Opposer has sold beer under its Tiger marks before Applicant adopted its mark.

Request 6: Applicant admits Opposer owns U.S. Reg. No. 3,294,199.

Request 7: Applicant admits Opposer owned U.S. Reg. No. 3,294,199 prior to Applicant's adoption of its mark.

Request 8: Applicant admits Opposer owns U.S. Reg. No. 3,318,461.

Request 9: Applicant admits Opposer owned U.S. Reg. No. 3,318,461 before Applicant adopted its mark.

Request 10: Applicant is without sufficient information and facts to form an opinion on if Opposer's marks are inherently distinctive.

Request 11: Applicant is without sufficient information and facts to form an opinion on if Opposer's marks are strong.

Request 12: Applicant admits Opposer's marks do not describe an attribute of Opposer's products.

Request 13: Applicant admits Opposer's marks do not suggest an attribute of Opposer's products.

Request 14: Applicant admits Applicant's mark shares the word Tiger with Opposer's marks but denies the mark is similar to Opposer's marks with respect to overall commercial impression.

Request 15: Applicant denies Applicant's mark is confusingly similar, based on an initial assessment, to Opposer's mark since the respective marks differ on their face and overall commercial impression when viewed by a sophisticated average purchaser in the marketplace.

Request 16: Applicant admits Applicant's mark shares the word Tiger with Opposer's marks.

Request 17: Applicant denies there is a likelihood of confusion between Applicant's mark and those of Opposer since this determination has not been made by the TTAB.

Request 18: Applicant admits the subject matter of request 18.

Request 19: Applicant admits the subject matter of request 19.

Request 20: Applicant denies he knew of Opposer as an entity or as seller of products under Opposer's marks.

Request 21: Applicant does not remember if he knew of Opposer's products before of adopting the Tiger Shark mark is without sufficient information and facts to form an opinion.

Request 22: Applicant denies he knew of Opposer as an entity before filing the application for Tiger Shark.

Request 23: Applicant denies he has drank Opposer's Tiger-branded beer prior to adopting the Tiger Shark mark.

Request 24: Applicant does not remember if he saw Opposer's advertising prior to adopting the Tiger Shark mark and so is without sufficient information and facts to form an opinion.

Request 25: Applicant does not remember if he saw Opposer's products prior to adopting the Tiger Shark mark and so is without sufficient information and facts to form an opinion.

Request 26: Applicant does not remember if he knew of Opposer's marks prior to adopting the Tiger Shark mark and so is without sufficient information and facts to form an opinion.

Request 27: Applicant denies he was aware of any of Opposer's registrations.

Request 28: Applicant admits to never selling beer under the Tiger Shark mark.

Request 29: Applicant admits to not having written plans to sell beer under the Tiger Shark mark, but nevertheless does have a bona fide intent to do so.

Request 30: Applicant admits the subject matter of request 30.

Request 31: Applicant admits the subject matter of request 31.

Request 32: Applicant denies that he has no business plans to sell Applicant's goods but admits to not having a written business plan.

Request 33: Applicant admits the subject matter of request 33.

Request 34: Applicant admits the subject matter of request 34.

Request 35: Applicant admits the subject matter of request 35.

Request 36: Applicant is without sufficient information and facts to form an opinion on since Applicant has not manufactured any type of beer under the Tiger Shark mark and further Opposer lists many types of products including non-alcoholic beverages (i.e. Beer, ale, lager, stout, pilsner, porter and non-alcoholic malt beverages). Beer is made in many types under different recipes (ingredients, malt, hops) and so is unlikely to be identical except that both could be considered types of beer.

Request 37: Applicant is without sufficient information and facts to form an opinion on since Applicant has not manufactured any type of beer and does not have a retail marketing plan.

Request 38: Applicant is without sufficient information and facts to form an opinion since Applicant has not manufactured any type of beer and does not have a retail marketing plan.

Request 39: Applicant is without sufficient information and facts to form an opinion since Applicant has not manufactured any type of beer and does not have a retail marketing plan. For example its product could only be sold in a tap room which is not a bar.

Request 40: Applicant is without sufficient information and facts to form an opinion since Applicant has not analyzed beer distribution channels especially with regard to imported beers and further Applicant is unaware of the site of manufacture of Opposer's products.

Request 41: Applicant denies this request since Applicant's goods are not yet marketed to anyone.

Request 42: Applicant admits the subject matter of request 42.

Request 43: Applicant admits the subject matter of request 43.

Request 44: Applicant is without sufficient information and facts to form an opinion since Applicant has not manufactured any type of beer and does not have a retail marketing plan.

Request 45: Applicant is without sufficient information and facts to form an opinion since Applicant has not manufactured any type of beer and does not have a retail marketing plan.

Request 46: Applicant is without sufficient information and facts to form an opinion since Applicant has not manufactured any type of beer and does not have a retail marketing plan.

Request 47: Applicant admits the potential for Applicant's and Opposer's goods to be sold in overlapping trade channels. .

Request 48: Applicant is without sufficient information and facts to form an opinion since Applicant has not manufactured any type of beer and has not sets any prices and further notes that price is relative to a consumer's budget and taste. Further still some craft or other beers are quite expensive relative to some large commercial beers.

Request 49: Applicant is without sufficient information and facts to form an opinion since Applicant has not manufactured any type of beer and does not have a retail marketing plan.

Request 50: Applicant is without sufficient information and facts to form an opinion since Applicant has not manufactured any type of beer and does not have a retail marketing plan.

Request 51: Applicant is without sufficient information and facts to form an opinion since Applicant has not priced Oposer's products, but admits they are likely priced similarly to other commercial beers of similar type.

Request 52: Applicant denies the subject matter of request 52.

Request 53: Applicant admits the subject matter of request 53.

Request 54: Applicant admits the subject matter of request 54.

Request 55: Applicant admits the subject matter of request 55.

Request 56: Applicant denies the subject matter of request 56.

Request 57: Applicant denies the subject matter of request 57.

Request 58: Applicant denies the subject matter of request 58.

Request 59: Applicant denies the subject matter of request 59.

Request 60: Applicant is without sufficient information and facts to form an opinion since Applicant has not conducted any surveys or analysis as to the recognition of Opposer's marks.

Request 61: Applicant denies the subject matter of request 61.

Request 62: Applicant denies the subject matter of request 62.

Request 63: Applicant denies the subject matter of request 63.

Request 64: Applicant denies the subject matter of request 64.

Request 65: Applicant denies the subject matter of request 65.

Request 66: Applicant denies the subject matter of request 66.

Request 67: Applicant denies the subject matter of request 67.

Our Ref. No: 1626-TM

Date: March 28, 2016.

/Jonathan A Claypool/

**Jonathan A Claypool
17062 Murphy Ave.
Irvine, CA 926151
Phone; 949-679-1190, Ext 284.
Fax: 949-266-9452**

Our Ref. No: 1626-TM

Certificate of Transmission and Service

I certify that the foregoing Answer to the Consolidated Notice of Opposition is being electronically filed with the Trademark Trial and Appeal Board and that the foregoing Answer to the Consolidated Notice of Opposition is also being sent via first class mail Opposer's attorney of record, Katie Bukrinsky, McDermott, Will & Emory, LLP, 500 North Capitol Street NW Washington DC 2001.

Date: March 28, 2016

/Jonathan A Claypool/

Jonathan A. Claypool

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

HEINEKEN ASIA PACIFIC Pte. Ltd.,

Opposer,

v.

JONATHAN CLAYPOOL,

Applicant.

Opposition No. 91220927

Serial No: 86/394137

Mark: TIGER SHARK

AMENDED NOTICE OF OPPOSITION

HEINEKEN ASIA PACIFIC Pte. Ltd. (“Opposer”), a private limited company organized and existing under the laws of Singapore, having its principal place of business at 459 Jalan Ahmad Ibrahim, Singapore 639934, will be damaged by registration of the mark “TIGER SHARK” in Application Serial No. 86/394137, filed by Jonathan Claypool, an individual located at 17062 Murphy Ave, Irvine, CA 92614 (“Applicant”), and opposes registration of same.

1. For over 75 years, Opposer has manufactured and sold beer under the mark TIGER and formatives thereof (collectively “TIGER Marks”).
2. Opposer has continuously sold beer under its TIGER Marks in the United States for many years. Opposer’s TIGER-branded beer is sold in grocery stores, convenience stores, bars, and restaurants throughout the United States.
3. On or about September 23, 2013, Opposer changed its corporate name from Asia Pacific Breweries Limited to Heineken Asia Pacific Pte. Ltd.

4. Opposer advertises its TIGER Marks through television and print ads and third-party promotions, as well as at **tigerbeerUS.com**, the Facebook page TigerbeerUS, and the Twitter handle @tigerbeerUS. Opposer's TIGER- branded beer has appeared in widely-seen films, including "Transporter" and "Tropic Thunder." Opposer also maintains a YouTube channel where its commercials for TIGER-branded beer are viewed by consumers in the United States.

5. Opposer owns registrations in the United States for TIGER (Reg. No. 3,294,199) and TIGER and Design (Reg. No. 3,318,461) for beer. Opposer's registrations are valid and subsisting.

6. Opposer's TIGER Marks are inherently distinctive because they do not describe an attribute of Opposer's goods.

7. Consumers in the United States associate Opposer's TIGER Marks as identifying beer emanating exclusively from Opposer. Opposer owns common law rights in the United States for TIGER for beer.

8. Notwithstanding Opposer's superior rights to the mark TIGER, on September 13, 2014, Applicant filed intent-to-use Application Serial No. 86/394,137 for TIGER SHARK for "beer."

9. Applicant's TIGER SHARK mark is substantially similar to Opposer's TIGER Marks in sight, sound, meaning and overall commercial impression.

10. Applicant's goods and Opposer's goods are identical and likely to be sold in the same channels of trade and to the same customers.

11. Applicant's use and registration of TIGER SHARK is likely to cause confusion, deception, and/or mistake with Opposer's TIGER Marks

12. Applicant lacks a bona fide intent to use TIGER SHARK for "beer." Applicant first admitted in discovery responses served on March 28, 2016 that he does not have a single document to establish a bona fide intention to use TIGER SHARK in commerce for beer, and that he has not taken any steps to commence any such use.

13. Applicant's use and registration of TIGER SHARK will interfere with Opposer's TIGER Marks, and damage Opposer, its business and its goodwill.

WHEREFORE, Opposer prays that registration of Applicant's mark be denied.

Respectfully submitted,

HEINEKEN ASIA PACIFIC Pte. Ltd.

Dated: April 14, 2016

By: /John J. Dabney/
John J. Dabney
Katie Bukrinsky
McDERMOTT WILL & EMERY LLP
500 North Capitol Street, NW
Washington, D.C. 20001
Telephone: (202) 756-8000
Facsimile: (202) 756-8087
jdabney@mwe.com
kbukrinsky@mwe.com

Attorneys for Opposer

CERTIFICATE OF SERVICE

Opposer HEINEKEN ASIA PACIFIC Pte. Ltd., by and through its attorneys, hereby certifies that a copy of this AMENDED NOTICE OF OPPOSITION has been served upon Applicant on April 14, 2016, by Email at the following address:

Jonathan A. Claypool
17062 Murphy Ave.
Irvine, CA 92614
JClaypool@zymoresearch.com

/ Katie Bukrinsky/
Katie Bukrinsky
McDERMOTT WILL & EMERY LLP
Attorney for Opposer