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Filing date: **08/20/2015**

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

Proceeding	91222800
Party	Defendant Andrew J. Grygiel
Correspondence Address	ANDREW J. GRYGIEL PO BOX 80106 Billings, MT 59108  wickedstreetbrewing@gmail.com;Montanaan
Submission	Answer and Counterclaim
Filer's Name	Andrew J. Grygiel
Filer's e-mail	Montanaandy@gmail.com
Signature	/Andrew J. Grygiel/
Date	08/20/2015
Attachments	Wicked Street Brewing Company Answer To Opposition & Cancellation Counterclaim.pdf(716031 bytes )

**Registrations Subject to the filing**

Registration No	3552392	Registration date	12/30/2008
Registrant	SPOETZL BREWERY, INC. 14800 SAN PEDRO AVENUE SAN ANTONIO, TX 78232 UNITED STATES		
Grounds for filing	The registered mark has been abandoned.		

**Goods/Services Subject to the filing**

Class 032. First Use: 2001/08/01 First Use In Commerce: 2001/08/01 Requested goods and services in the class: BEER [ AND ALE ]
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Registration No	1761609	Registration date	03/30/1993
Registrant	SPOETZL BREWERY, INC. 14800 SAN PEDRO AVENUE SAN ANTONIO, TX 78232 UNITED STATES		
Grounds for filing	The registered mark has been abandoned.		

**Goods/Services Subject to the filing**

Class 032. First Use: 1987/02/26 First Use In Commerce: 1987/06/22 Requested goods and services in the class: beer
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Registration No	1646210	Registration date	05/28/1991
Registrant	SPOETZL BREWERY, INC. 14800 SAN PEDRO AVENUE SAN ANTONIO, TX 78232 UNITED STATES		
Grounds for filing	The registered mark has been abandoned.		

## Goods/Services Subject to the filing

Class 032. First Use: 1987/02/26 First Use In Commerce: 1987/06/22  
Requested goods and services in the class: beer

Certificate Of Electronic Filing

I hereby certify that this correspondence is being electronically filed with the Trademark Trial and Appeal Board through the ESTTA system located at <http://estta.uspto.gov>

Dated: 8/20/15 By: Andrew J. Grygiel  
Andrew J. Grygiel

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

	)	<b>Opposition No. 91222800</b>
	)	
<b>THE GAMBRINUS COMPANY,</b>	)	<b>Application No. 86251332</b>
	)	
<b>Opposer,</b>	)	<b>Marks: Wicked Ale, Pete's</b>
	)	<b>Wicked Ale, Wicked</b>
<b>vs.</b>	)	
<b>ANDREW J. GRYGIEL, DBA WICKED</b>	)	
<b>STREET BREWING COMPANY,</b>	)	
	)	<b>Cancellation No.:</b>
<b>Applicant.</b>	)	
	)	<b>Registration Nos.: 1,646,210;</b>
	)	<b>1,761,609; 3,552,392</b>
	)	
	)	<b>Mark: Wicked Street</b>
	)	<b>Brewing Company</b>

**ANSWER TO NOTICE OF OPPOSITION AND COUNTERCLAIM TO CANCEL**

**OPPOSER'S REGISTRATION NOS. 1,646,210; 1,761,609; 3,552,392**

Applicant Andrew J. Grygiel, DBA Wicked Street Brewing Company, answers

Opposer The Gambrinus Company's Notice Of Opposition as follows:

1. Applicant admits the allegations of ¶ 1 of the Notice Of Opposition.
2. Applicant admits the allegations of ¶ 2 of the Notice Of Opposition.
3. Applicant admits the allegations of ¶ 3 of the Notice Of Opposition.

4. Applicant admits the allegations of ¶ 4 of the Notice Of Opposition.
5. Applicant denies the allegations of ¶ 5 of the Notice Of Opposition.
6. Applicant denies the allegations of ¶ 5 of the Notice Of Opposition.

**COUNTERCLAIM TO CANCEL OPPOSER'S REGISTRATION NOS.1,646,210;  
1,761,609; 3,552,392**

The grounds for cancellation of Opposer's trademarks WICKED ALE, PETE'S WICKED ALE AND WICKED are as follows:

7. Opposer deliberately ceased production and distribution of "Pete's Wicked Ale" the goods associated with Registration Nos 1,646,210, 1,761,609, 3,552,392 in May of 2011.

8 Opposer has failed to continue to actively use the trademarks associated with Registration Nos 1,646,210, 1,761,609, and 3,552,392 in the stream of commerce in connection with the goods stated in the registration for a period greater than three years.

9 Opposer has abandoned Registration Nos 1,646,210, 1,761,609, 3,552,392 by both deliberately ceasing production and distribution of the goods associated with Registration Nos 1,646,210, 1,761,609, 3,552,392 and by failing to continue to actively use the trademarks associated with Registration Nos 1,646,210, 1,761,609, and 3,552,392 in the stream of commerce and in connection with the goods stated in the registration for a period greater than three years which is prima facie evidence of abandonment.

10 Opposer has abandoned Registration Nos 1,646,210, 1,761,609, and 3,552,392 by deliberately ceasing production and distribution for a period greater than three years with no intention of using the trademark again in the future.

11 Opposer has abandoned Registration Nos 1,646,210, 1,761,609, and 3,552,392 by deliberately ceasing production and distribution for a period greater than three years with no intention of using the trademark again in the future and therefore may no longer claim any legal rights in the trademarks associated with Registration Nos 1,646,210, 1,761,609, and 3,552,392.

12 The trademarks associated with Registration Nos 1,646,210, 1,761,609, and 3,552,392 have lost their significance as trademarks through the failure of the Opposer to continue use of the trademarks associated with Registration Nos 1,646,210, 1,761,609, and 3,552,392 in a consistent and controlled manner.

WHEREFORE, Applicant respectfully prays as follows:

1. That the Opposition be dismissed
2. That Opposer's trademarks associated with Registration Nos 1,646,210, 1,761,609, and 3,552,392 be cancelled.
3. That registration of Trademark Application Serial No 86251332 for Wicked Street shown and specified in US Trademark Application Serial No 86251332 be sustained.

Respectfully submitted this 20<sup>th</sup> day of August, 2015.



Andrew J. Grygiel, DBA Wicked Street  
Street Brewing Company  
APPLICANT

### CERTIFICATE OF SERVICE

I, Andrew J. Grygiel hereby certify that on this 20<sup>th</sup> day of August, 2015, I served a copy of the foregoing on counsel of record for the Opposer by mailing same, United States mail, first class postage prepaid thereon, and addressed as follows:

J. Scott Gerien  
Christopher J. Passerelli  
Dickenson, Peatman & Forgarty  
1455 First Street, Ste. 301  
Napa, California 94559

