

ESTTA Tracking number: **ESTTA791876**

Filing date: **12/27/2016**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Otter Creek Brewing Company LLC
Granted to Date of previous extension	03/15/2017
Address	793 Exchange St. Middlebury, VT 05753 UNITED STATES

Attorney information	Joseph D. Lewis Barnes & Thornburg LLP 1717 Pennsylvania Ave NW STE 500 Washington, DC 20006 UNITED STATES jdlewis@btlaw.com, docketingtm-dc@btlaw.com Phone:202-289-1313
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Applicant Information

Application No	87132592	Publication date	11/15/2016
Opposition Filing Date	12/27/2016	Opposition Period Ends	03/15/2017
Applicant	Patagonia Provisions, Inc. 259 W. Santa Clara St. Ventura, CA 93001 UNITED STATES		

Goods/Services Affected by Opposition


Class 032. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Beer, ale, lager, stout and porter

Grounds for Opposition


Priority and likelihood of confusion	Trademark Act Section 2(d)
False suggestion of a connection with persons, living or dead, institutions, beliefs, or national symbols, or brings them into contempt, or disrepute	Trademark Act Section 2(a)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	4194407	Application Date	01/10/2012
Registration Date	08/21/2012	Foreign Priority Date	NONE

Word Mark	THE SHED
Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 1995/00/00 First Use In Commerce: 1995/00/00 Ale; Beer

U.S. Registration No.	4614003	Application Date	05/22/2014
Registration Date	09/30/2014	Foreign Priority Date	NONE

Word Mark	SHED
Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 1995/00/00 First Use In Commerce: 1995/00/00 Ale; Beer; Porter

U.S. Registration No.	4935038	Application Date	02/27/2015
Registration Date	04/12/2016	Foreign Priority Date	NONE
Word Mark	THE SHED BREWERY BREWING FRESH ALES SINCE 1995 Â· ESTABLISHED IN STOWE, VERMONT		

Design Mark	
Description of Mark	<p>The mark consists of "THE SHED BREWERY" on a representation of a wooden board in the shape of a hexagon; above the board in an incomplete circle made up of a series of concentric circles with the wording "BREWING FRESH ALES SINCE 1995 • ESTABLISHED IN STOWE, VERMONT" within the third concentric circle. In the center of the circle design is a representation of two trees, with the tree trunks and lower branches combining to form an outline of a house between the two trees, and the building having a stylized representation of a door in the shape of a pint glass.</p>
Goods/Services	<p>Class 032. First use: First Use: 2012/00/00 First Use In Commerce: 2012/00/00 Ale; Beer</p>

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	THE SHED BREWERY		
Goods/Services	beer and accessories		

Attachments	<p>85513230#TMSN.png(bytes) 86289805#TMSN.png(bytes) 86548840#TMSN.png(bytes) OCV v Patagonia beer filed 4565486_1.pdf(1412880 bytes) THE SHED All Exhibits.pdf(581606 bytes)</p>
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/JDL/
Name	Joseph D. Lewis

Date	12/27/2016
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Otter Creek Brewing Company LLC,)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
Patagonia Provisions, Inc.,)	Serial No. 87132592
)	
Applicant)	
_____)	

NOTICE OF OPPOSITION

Otter Creek Brewing Company LLC believes it will be damaged by registration of the trademark TIN SHED (the “Opposed Mark”) shown in Application Serial No. 87132592 and published for opposition on November 15, 2016 (the “Opposed Application”), and hereby opposes said application. The grounds for this opposition are as follows:

1. Otter Creek Brewing Company LLC (“Opposer”) is a limited liability company organized and existing under the laws of the Vermont, and has a place of business at 793 Exchange Street, Middlebury, Vermont 05753.
2. Since at least as early as 1994, Opposer and its predecessors-in-interest have used SHED and THE SHED as trademarks for beer and ale. Opposer also has long used in commerce as a trade name and trademark in connection with beer the designation THE SHED BREWERY, and is known as The Shed Brewery and The Shed.
3. In addition to common law rights in the aforesaid trademarks and trade name, Opposer is the owner of several trademark registrations which incorporate SHED.

4. Opposer is the owner of Registration No. 4194407, issued August 21, 2012, for the mark THE SHED for beer and ale.

5. Opposer is the owner of Registration No. 4614003, issued September 30, 2014, for the mark SHED, which covers beer, ale, and porter.

6. Opposer is the owner of Registration No. 4935038, issued April 12, 2016, for the mark THE SHED BREWERY BREWING FRESH ALES SINCE 1995 · ESTABLISHED IN STOWE, VERMONT & Design, which covers beer and ale.

7. These federal registrations are valid, subsisting on the Principal Register and in full force and effect. Printouts from the USPTO's TSDR database, attached hereto as Exhibits A, B and C, establish the current status and title of each of the three foregoing federal trademark registrations.

8. Opposer has expended considerable effort in promoting its goods under its marks. Opposer's efforts have been successful and its trademarks and trade name have become well-known and valuable symbols of the Opposer and its goodwill.

9. Upon information and belief, Patagonia Provisions, Inc. ("Applicant") is a California corporation with a place of business at 259 W. Santa Clara Street, Ventura, California 93001.

10. On August 9, 2016, Applicant filed the Opposed Application to register the mark TIN SHED for "Beer, ale, lager, stout and porter" in International Class 32.

11. The goods listed in the Opposed Application are encompassed by the goods listed in Opposer's Registrations Nos. 4194407, 4614003 and 4935038.

12. The Opposed Mark was not in use by Applicant in connection with beer, ale, lager, stout or porter prior to January 1, 2016.

13. The Opposed Mark was not in use by Applicant in connection with beer, ale, lager, stout or porter prior to January 1, 2015.

14. Neither the use of the Opposed Mark by Applicant, nor the filing of the application for registration of the Opposed Mark have been done with Opposer's consent. Nor is Opposer connected with the Applicant or its beer, ale, lager, stout or porter.

15. The Opposed Mark is confusingly similar in appearance, sound, meaning, and commercial impression to Opposer's registered and unregistered SHED trademarks.

16. The Opposed Mark, when used for the goods recited in the Opposed Application, is likely to cause confusion, mistake or deception within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. Sec. 1052(d).

17. The Opposed Mark, when used in connection with beer, ale, lager, stout and porter, is likely to cause confusion, to cause mistake, and to deceive the trade and public, who, upon seeing the Opposed Mark in connection with beer, ale, lager, stout and porter, would believe that such goods originate with, are approved, sponsored, or endorsed by, or have some connection or affiliation with Opposer.

18. The Opposed Mark is a close approximation of Opposer's previously used trade name and identity, and would be recognized as such.


19. The Opposer's name and identify are of sufficient fame and reputation that when the Opposed Mark is used in connection with beer, ale, lager, stout and porter, a connection with Opposer would be presumed, within the meaning of Section 2(a) of the Trademark Act, 15 U.S.C. Sec. 1052(a).

20. Registration of the Opposed Mark by Applicant would provide Applicant with prima facie exclusive rights therein, and would harm Opposer by interfering with Opposer's rights to its registered marks and common law trademarks and trade name.

WHEREFORE, Otter Creek Brewing Company LLC believes that it will be damaged by the registration of the Opposed Mark, and prays that this opposition be sustained and said application be refused.

Respectfully submitted,

Otter Creek Brewing Company LLC

By: 

Joseph D. Lewis

BARNES & THORNBURG LLP

1717 Pennsylvania Avenue, NW, Suite 500

Washington, D.C. 20006

Telephone: (202) 289-1313

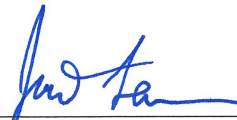
Email: joe.lewis@btlaw.com; and
docketingtm-dc@btlaw.com

Attorneys for Opposer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this Notice of Opposition has been served on December 27, 2016 by emailing a copy of the same to the correspondent of record for Applicant at:

Mr. Robert Tadlock
Patagonia, Inc.
259 W. Santa Clara Street
Ventura, CA 93001



Joseph D. Lewis

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Mark: THE SHED

THE SHED

US Serial Number: 85513230

Application Filing Date: Jan. 10, 2012

US Registration Number: 4194407

Registration Date: Aug. 21, 2012

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Trademark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Aug. 21, 2012

Publication Date: Jun. 05, 2012

Mark Information

Mark Literal Elements: THE SHED

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (..) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *.* identify additional (new) wording in the goods/services.

For: Ale; Beer

International Class(es): 032 - Primary Class

U.S Class(es): 045, 046, 048

Class Status: ACTIVE

Basis: 1(a)

First Use: 1995

Use in Commerce: 1995

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Owner Name: Otter Creek Brewing Company LLC

Owner Address: P.O. Box 168
Jct. Route 4 & 100A
Bridgewater Corners, VERMONT 05035
UNITED STATES

Exhibit A

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country VERMONT
Where Organized:

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Joseph D. Lewis
Attorney Primary Email Address: joe.lewis@btlaw.com
Docket Number: 57225-49399
Attorney Email Authorized: No

Correspondent

Correspondent Name/Address: JOSEPH D. LEWIS
BARNES & THORNBURG LLP
1717 PENNSYLVANIA AVE NW STE 500
WASHINGTON, DISTRICT OF COLUMBIA 20006-4623
UNITED STATES
Phone: 202-289-1313
Fax: 202-289-1330
Correspondent e-mail: joe.lewis@btlaw.com docketingtm-dc@btlaw.com
Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Aug. 21, 2012	REGISTERED-PRINCIPAL REGISTER	
Jun. 05, 2012	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jun. 05, 2012	PUBLISHED FOR OPPOSITION	
May 16, 2012	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Apr. 18, 2012	APPROVED FOR PUB - PRINCIPAL REGISTER	
Apr. 16, 2012	ASSIGNED TO EXAMINER	82430
Jan. 13, 2012	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jan. 13, 2012	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Aug. 21, 2012

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Mark: SHED

SHED

US Serial Number: 86289805

Application Filing Date: May 22, 2014

US Registration Number: 4614003

Registration Date: Sep. 30, 2014

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Trademark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Sep. 30, 2014

Publication Date: Jul. 15, 2014

Mark Information

Mark Literal Elements: SHED

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Related Properties Information

Claimed Ownership of US Registrations: 4194407

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Ale; Beer; Porter

International Class(es): 032 - Primary Class

U.S Class(es): 045, 046, 048

Class Status: ACTIVE

Basis: 1(a)

First Use: 1995

Use in Commerce: 1995

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Exhibit B

Owner Name: Otter Creek Brewing Company LLC

Owner Address: P.O. Box 168
Jct. Route 4 & 100A
Bridgewater Corners, VERMONT 05035
UNITED STATES

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country VERMONT
Where Organized:

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Joseph D. Lewis

Docket Number: 57225-555478

Attorney Primary jdlewis@btlaw.com
Email Address:

Attorney Email Yes
Authorized:

Correspondent

Correspondent JOSEPH D. LEWIS
Name/Address: BARNES & THORNBURG LLP
1717 PENNSYLVANIA AVE NW STE 500
WASHINGTON, DISTRICT OF COLUMBIA 20006-4623
UNITED STATES

Phone: 202-289-1313

Correspondent e- jdlewis@btlaw.com docketingtm-dc@btlaw.com
mail:

Correspondent e- Yes
mail Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Sep. 30, 2014	REGISTERED-PRINCIPAL REGISTER	
Jul. 15, 2014	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jul. 15, 2014	PUBLISHED FOR OPPOSITION	
Jun. 25, 2014	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jun. 09, 2014	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jun. 09, 2014	ASSIGNED TO EXAMINER	89010
Jun. 05, 2014	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
May 26, 2014	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Sep. 30, 2014

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Mark: THE SHED BREWERY BREWING FRESH ALES SINCE 1995 · ESTABLISHED IN STOWE, VERMONT



US Serial Number: 86548840

Application Filing Date: Feb. 27, 2015

US Registration Number: 4935038

Registration Date: Apr. 12, 2016

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor:



LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Apr. 12, 2016

Publication Date: Jan. 26, 2016

Mark Information

Mark Literal Elements: THE SHED BREWERY BREWING FRESH ALES SINCE 1995 · ESTABLISHED IN STOWE, VERMONT

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of "THE SHED BREWERY" on a representation of a wooden board in the shape of a hexagon; above the board in an incomplete circle made up of a series of concentric circles with the wording "BREWING FRESH ALES SINCE 1995 · ESTABLISHED IN STOWE, VERMONT" within the third concentric circle. In the center of the circle design is a representation of two trees, with the tree trunks and lower branches combining to form an outline of a house between the two trees, and the building having a stylized representation of a door in the shape of a pint glass.

Color(s) Claimed: Color is not claimed as a feature of the mark.

Disclaimer: "BREWERY", "BREWING FRESH ALES SINCE 1995" AND "ESTABLISHED IN STOWE, VERMONT"

Design Search Code(s): 05.01.02 - Trees or bushes with a generally rounded shape, including deciduous trees; Maple tree
05.01.05 - Leafless trees and bushes
05.01.10 - More than one tree or bush; thicket; group of trees; Thicket
07.01.04 - Detached house
07.01.06 - Other houses
07.01.07 - Huts; Outhouses; Sheds
07.03.25 - Convention hall; Aquariums (buildings); Hospitals; Wash, car (commercial); Schools; Libraries, public libraries
07.07.01 - Doors; Garage doors; Sliding doors
07.07.03 - Roofs, dwelling or building
07.15.04 - Beams, wood; Wood boards; Parquet flooring; Lumber
11.03.01 - Glasses without stems
11.03.02 - Mugs, beer; Tankards; Cups, beer mugs; Beer steins or mugs
24.09.07 - Advertising, banners; Banners
26.01.18 - Circles, three or more concentric; Concentric circles, three or more; Three or more concentric circles
26.01.21 - Circles that are totally or partially shaded.
26.15.02 - Polygons (plain, single line); Plain single or multiple line polygons
26.17.01 - Bands, straight; Bars, straight; Lines, straight; Straight line(s), band(s) or bar(s)
26.17.05 - Bars, horizontal; Horizontal line(s), band(s) or bar(s); Bands, horizontal; Lines, horizontal

Related Properties Information

Claimed Ownership 4194407, 4614003
of US
Registrations:

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (..) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *.* identify additional (new) wording in the goods/services.

For: Ale; Beer

International Class(es): 032 - Primary Class

U.S Class(es): 045, 046, 048

Class Status: ACTIVE

Basis: 1(a)

First Use: 2012

Use in Commerce: 2012

Used Anywhere in Another Form: The mark was first used anywhere in a different form other than that sought to be registered at least as early as 00/00/1995

Used in Commerce in Another Form: The mark was first used in commerce in a different form other than that sought to be registered at least as early as 00/00/1995

Basis Information (Case Level)

Filed Use: Yes	Currently Use: Yes	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Otter Creek Brewing Company LLC

Owner Address: P.O. Box 168, Jct. Route 4 & 100A
Bridgewater Corners, VERMONT UNITED STATES 05035

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: VERMONT

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Joseph D. Lewis

Docket Number: 57225-555479

Attorney Primary Email Address: jdlewis@btlaw.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: JOSEPH D. LEWIS
Barnes & Thornburg Llp
1717 Pennsylvania Ave NW Ste 500
Washington, DISTRICT OF COLUMBIA UNITED STATES 20006-4623

Phone: 202-289-1313

Correspondent e-mail: jdlewis@btlaw.com jdlewis@btlaw.com docketingt@btlaw.com
m-dc@btlaw.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Apr. 12, 2016	REGISTERED-PRINCIPAL REGISTER	
Jan. 26, 2016	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jan. 26, 2016	PUBLISHED FOR OPPOSITION	
Jan. 06, 2016	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Dec. 17, 2015	APPROVED FOR PUB - PRINCIPAL REGISTER	
Dec. 11, 2015	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Dec. 08, 2015	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Dec. 08, 2015	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jun. 09, 2015	NOTIFICATION OF PRIORITY ACTION E-MAILED	6326
Jun. 09, 2015	PRIORITY ACTION E-MAILED	6326
Jun. 09, 2015	PRIORITY ACTION WRITTEN	91234
Jun. 01, 2015	ASSIGNED TO EXAMINER	91234
Mar. 14, 2015	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Mar. 13, 2015	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Mar. 03, 2015	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Apr. 12, 2016