

ESTTA Tracking number: **ESTTA836547**

Filing date: **07/31/2017**

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	Prescott Brewing Company, Inc.		
Entity	Corporation	Citizenship	Arizona
Address	130 W. Gurley Suite A Prescott, AZ 86301 UNITED STATES		

Attorney information	Robert J. Itri Milligan Lawless, P.C. 5050 N. 40th Street, Suite 200 Phoenix, AZ 85018 UNITED STATES Email: bob.istri@milliganlawless.com Phone: 602-792-3532
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### Applicant Information

Application No	87318318	Publication date	07/04/2017
Opposition Filing Date	07/31/2017	Opposition Period Ends	08/03/2017
Applicant	Peticolas Brewing Company, LLC C/O Buche & Associates, P.C. 875 Prospect St., Suite 305 La Jolla, CA 92037 UNITED STATES		

### Goods/Services Affected by Opposition

Class 032. First Use: 2010/12/26 First Use In Commerce: 2011/04/01  
All goods and services in the class are opposed, namely: Beer

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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### Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	4000733	Application Date	04/12/2010
Registration Date	07/26/2011	Foreign Priority Date	NONE
Word Mark	PBC		

Design Mark	<h1>PBC</h1>
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 1994/03/15 First Use In Commerce: 1994/03/15 beverages, namely, beer and ale Class 043. First use: First Use: 1994/03/15 First Use In Commerce: 1994/03/15 bar and restaurant services

Attachments	85011964#TMSN.png( bytes ) Notice of Opposition.pdf(157063 bytes )
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Signature	/robert j. itri/
Name	Robert J. Itri
Date	07/31/2017

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

Prescott Brewing Company, Inc.,

Opposer,

v.

Peticolas Brewing Company, LLC,

Applicant.

**E-FILING**

Opposition No. \_\_\_\_\_

Serial No. 87/318,318

Mark: PBC PETICOLAS BREWING  
COMPANY 2010 (Stylized/Design)

Published: July 4, 2017

**NOTICE OF OPPOSITION**

Prescott Brewing Company, Inc., an Arizona corporation (“Opposer”), believes that it would be damaged by the registration of the PBC PETICOLAS BREWING COMPANY 2010 mark:



which is the subject of Application Serial No. 87/318,318 (the “Application”) filed by Peticolas Brewing Company, LLC, a Texas Limited Liability Company, (“Applicant”) for all goods and services cited in the Application, namely “Beer,” in International Class 32. Accordingly, Opposer hereby opposes said registration under the provisions of Sections 2(d) and 13 of the Trademark Act of July 5, 1946, as amended, (15 U.S.C. § 1051 *et seq.*).

The grounds for opposition are as follows:

1. Applicant was, upon information and belief, formed on October 27, 2009 and is an operator of a microbrewery and taproom located in Dallas, Texas.
2. On January 30, 2017, Applicant filed the Application opposed hereby seeking to register the applied-for mark:



for “Beer” in International Class 32.

3. The Application was published in the *Official Gazette* on July 4, 2017.

4. Opposer is an Arizona microbrewery and brew pub operator, which produces over 55 types of craft beer.

5. Since 1994, Opposer has promoted its brand craft beer, microbrewery and brew pub goods and services under the mark **PBC**. Opposer’s **PBC** brand craft beers are sold in restaurant, bar, liquor stores and supermarkets, including such national retailers as Safeway, Whole Food Markets, Total Wine & More and BevMo.

6. Opposer’s **PBC** brand craft beers have won 31 national and international awards in prestigious competitions such as the Great American Beer Festival, North American Brewers Association, and the international World Beer Cup.

7. Since 1994, Opposer has expended over a million dollars promoting its **PBC** brand beer through various local and national print, radio, television and outdoor advertising channels. Opposer has also made prominent use of the **PBC** mark on its website [www.prescottbrewingcompany.com](http://www.prescottbrewingcompany.com).

8. Through its extensive and long-term use of the **PBC** mark, and the expenditure of substantial sums of money in promoting its craft beer under the mark, Opposer has developed substantial goodwill and valuable rights in the **PBC** mark.

9. On July 26, 2011, Opposer obtained federal registration of the standard character mark **PBC** for use in connection with “beverages, namely beer and ale” in Class 32 and “bar and restaurant services” in Class 43 under U.S. Reg. No. 4000733.<sup>1</sup> Such registration is valid and

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<sup>1</sup> Opposer also owns federal registrations for its marks PRESCOTT BREWING COMPANY (standard character mark), Reg. No. 3,300,786, and PRESCOTT BREWING COMPANY ARIZONA (design

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subsisting and constitutes *conclusive* evidence of Opposer's exclusive right to use the mark **PBC** for "beer" and to prevent registration of confusingly similar marks.

10. Opposer's mark, **PBC**, is a standard character mark for which no particular display of the mark is claimed. Accordingly, Opposer's mark may be displayed in any lettering style.

11. Applicant's mark is "PBC Peticolas Brewing Company." The dominant element of the applied-for mark is "PBC," which is prominently displayed in the very center of the applied-for mark and is comprised of a stylized backward facing "B," a stylized forward facing "P," and a stylized forward facing "C." The letters would likely be associated as an abbreviation for the name of the establishment, namely, Peticolas Brewing Company." The remainder of the applied-for mark is either informational or merely descriptive such as "the shape of Texas" and the "2010," which depict the state in which the product is made and the business was founded.

12. "PBC" is also the first element that consumers will encounter in both Applicant's applied-for mark and in Opposer's **PBC** mark. As such, consumers are most likely to focus upon and remember the element "PBC" when making purchasing decisions.

13. Furthermore, the description of goods to be offered under Applicant's applied-for-mark and the description of goods offered under Opposer's **PBC** mark are identical—beer.

14. Additionally, neither Applicant's Application nor Opposer's registration contains any restrictions on channels of trade through which the goods will travel or the class of consumers to whom the goods will be marketed. Accordingly, Applicant's goods and Opposer's goods will undoubtedly be offered to the public through similar channels of trade, including craft beer retailers, restaurants, bars, liquor stores and supermarkets, and to the same class of consumers—drinking age consumers of beer.

15. Opposer's registration gives it the exclusive right to the literal element "PBC" for use in conjunction with beer, including the stylized form employed by Applicant in the applied-for mark. Moreover, 1) the goods offered under the marks—beer—are identical; 2) the channels of trade in which the goods will travel, including restaurants, bars, liquor stores and supermarkets are identical; and 3) the class of consumers to whom the goods will be sold are identical. Consequently, registration of the applied-for mark will result in consumer confusion

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within the meaning of Section 2(d) of the Trademark Act (15 U.S.C. § 1052(d)) and infringe upon Opposer's exclusive common law and federal trademark rights in the **PBC** mark. In sum, Applicant attempts to register the applied-for mark will result in damage to Opposer.

**WHEREFORE**, Opposer requests that Application Serial No. 87/318,318 be rejected, that no registration issue in connection with the Application, and that this opposition be sustained in favor of Opposer.

Respectfully submitted,

Dated: July 31, 2017

By: s/Robert J. Itri/

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 31st day of July, 2017, a true and correct copy of the foregoing NOTICE OF OPPOSITION was served on the following via first class mail:

John K. Buche, Esq.  
BUCHE & ASSOCIATES, P.C.  
875 Prospect Street, Suite 305  
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*Counsel for Applicant*

s/Robert J. Itri/

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