

ESTTA Tracking number: **ESTTA850856**

Filing date: **10/09/2017**

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	10 Barrel Brewing, LLC
Granted to Date of previous extension	10/08/2017
Address	62970 NE 18TH ST BEND, OR 97701 UNITED STATES

Attorney information	Bobby Ghajar and Marcus Peterson Cooley LLP 1333 2nd Street, Suite 400 Santa Monica, CA 90401 UNITED STATES Email: mpeterson@cooley.com, bghajar@cooley.com, jalvarez@cooley.com, trademarks@cooley.com Phone: 310-883-6400
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Applicant Information

Application No	87261777	Publication date	04/11/2017
Opposition Filing Date	10/09/2017	Opposition Period Ends	10/08/2017
Applicant	MASON'S BREWING COMPANY, LLC P.O. BOX 1255 Holden, ME 04429 UNITED STATES		

Goods/Services Affected by Opposition


Class 032. First Use: 2016/12/01 First Use In Commerce: 2016/12/02
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. Application No.	86191525	Application Date	02/12/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	APOCALYPSE IPA		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 2009/09/00 First Use In Commerce: 2009/10/00 Beer

Attachments	86191525#TMSN.png(bytes) Notice of Opposition.pdf(102295 bytes)
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Signature	/Marcus Peterson/
Name	Marcus Peterson
Date	10/09/2017

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

10 BARREL BREWING, LLC,)	
)	Opposition No.:
Opposer,)	
)	Application Ser. No.: 87/261,777
v.)	
)	Date of Filing: December 8, 2016
MASON’S BREWING COMPANY, LLC,)	
)	Subject Mark: MASON’S HIPSTER
Applicant.)	APOCALYPSE
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NOTICE OF OPPOSITION

Opposer 10 Barrel Brewing, LLC (“10 Barrel”), an Oregon limited liability company, having a place of business at 62970 18th Street, Bend, Oregon 97701, believes that it will be damaged by the registration of U.S. Ser. No. 87/261,777 (“the ‘777 Application”), filed December 8, 2016 for the mark MASON’S HIPSTER APOCALYPSE. 10 Barrel believes Applicant’s correspondence address to be:

JAMES F. KEENAN, JR.
BERNSTEIN, SHUR, SAWYER & NELSON
100 MIDDLE STREET
PORTLAND, ME 04104
jkeenan@bssn.com

10 Barrel hereby opposes the ‘777 Application on the following grounds:

10 BARREL AND ITS APOCALYPSE IPA MARK

1. 10 Barrel owns and is using the trademark APOCALYPSE IPA in interstate commerce in connection with beer.
2. 10 Barrel applied to register the APOCALYPSE IPA mark on February 12, 2014. The application was issued U.S. Ser. No. 86/191,525. 10 Barrel applied under a 1(a) filing basis,

alleging a date of first use of September 2009, and a date of first use in commerce of October 2009.

3. Since its first use over eight years ago, 10 Barrel has expended considerable effort and expense in promoting the APOCALYPSE IPA mark, and goods offered in connection with this mark, in and throughout the United States.

4. Because of 10 Barrel's use and promotion of its APOCALYPSE IPA mark, and the goods sold under that mark, it has established significant goodwill among consumers, who associate the APOCALYPSE IPA mark exclusively with 10 Barrel.

APPLICANT'S "MASON'S HIPSTER APOCALYPSE" MARK

5. Applicant applied to register the MASON'S HIPSTER APOCALYPSE mark on December 8, 2016 in connection with "beer" in International Class 32. Applicant claimed a date of first use of the mark as December 1, 2016 and use in commerce as December 2, 2016.

6. The '777 Application was published for opposition on April 11, 2017. 10 Barrel took an extension of time to oppose on April 20, 2017, giving 10 Barrel until August 9, 2017 to oppose the application. 10 Barrel took another extension of time, with Applicant's consent, giving 10 Barrel until October 8, 2017 to oppose the application. Because October 8, 2017 was a Sunday, the deadline was extended to October 9, 2017. Thus, this Notice of Opposition is timely.

7. Upon information and belief, Applicant selected the MASON'S HIPSTER APOCALYPSE mark with knowledge of 10 Barrel's APOCALYPSE IPA mark, and with intent to trade off the goodwill in the APOCALYPSE IPA mark.

8. 10 Barrel is not affiliated or connected with Applicant or its goods; nor has 10 Barrel endorsed or sponsored Applicant or its goods.

**FIRST GROUND FOR OPPOSITION:
LIKELIHOOD OF CONFUSION**

9. 10 Barrel incorporates by reference paragraphs 1-8, inclusive, as if fully set forth here.

10. 10 Barrel began using its APOCALYPSE IPA mark, and enjoys priority as a result of its use and based on the filing date of its pending application, both of which were well prior to Applicant's alleged date of first use of the MASON'S HIPSTER APOCALYPSE mark, or the date Applicant filed the '777 Application.

11. Applicant's MASON'S HIPSTER APOCALYPSE mark is similar in sound, appearance, and commercial impression to 10 Barrel's APOCALYPSE IPA mark, as it nearly subsumes the APOCALYPSE IPA mark (with the exception of the disclaimed term "IPA"). Given that the parties' goods are identical, including that both parties use their marks in connection with the same style – IPA – of beer, consumers will likely believe Applicant is affiliated with 10 Barrel or has 10 Barrel's approval.

12. In view of the strength of the APOCALYPSE IPA mark, and 10 Barrel's longstanding use of the mark in connection with IPA-style beer, purchasers are likely to mistakenly – if only initially – believe that Applicant's MASON'S HIPSTER APOCALYPSE goods originate from, are sponsored by, or are in some way associated with 10 Barrel, when they are not.

13. Applicant's identification of goods does not contain any limitation on channels of trade. Thus, because the goods and services are of a type that would be offered to and obtained by the general public, the channels of trade for the respective parties' goods and services completely overlap.

14. Applicant's mark was filed as a standard character mark; therefore, nothing prevents Applicant from using a font or stylization similar to that used by 10 Barrel in connection with its APOCALYPSE IPA mark.

15. Any defect, objection, or fault found with Applicant's goods or services marketed under the MASON'S HIPSTER APOCALYPSE mark would necessarily reflect upon and injure the reputation that 10 Barrel has established for the goods it offers in connection with the APOCALYPSE IPA mark.

16. Accordingly, registration of the mark applied for in the '777 Application will damage 10 Barrel because the mark is likely, when used on or in connection with the goods and services described in the registration, to cause confusion, or to cause mistake or to deceive.

17. Accordingly, registration for the mark applied for in the '777 Application should be refused under the provisions of Section 2(d) of the Trademark Act.

WHEREFORE, Opposer respectfully requests that the Opposition be sustained and that Application Serial No. 87/261,777 be refused registration.

DATED: October 9, 2017.

Respectfully Submitted,

/Marcus Peterson/
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Attorneys for Opposer
10 Barrel Brewing, LLC

CERTIFICATE OF ELECTRONIC TRANSMISSION

DATE OF DEPOSIT October 9, 2017:

I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office Trademark Trial and Appeal Board using the Electronic System for Trademark Trials and Appeals (ESTTA) on the date indicated above.

/Marcus Peterson/

Marcus Peterson

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