

ESTTA Tracking number: **ESTTA863041**

Filing date: **12/06/2017**

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 | Spoetzl Brewery, Inc. |
| Granted to Date of previous extension | 12/06/2017 |
| Address | 14800 SAN PEDRO AVENUE, SUITE 300 SAN ANTONIO, TX 78232 UNITED STATES |

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| Attorney information | J. Scott Gerien; Joy L. Durand Dickenson Peatman & Fogarty 1455 First St., Ste. 301 Napa, CA 94559 UNITED STATES Email: tmltg@dpf-law.com, jkilgore@dpf-law.com, jdurand@dpf-law.com |
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Applicant Information

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|------------------------|---|------------------------|------------|
| Application No | 87437078 | Publication date | 08/08/2017 |
| Opposition Filing Date | 12/06/2017 | Opposition Period Ends | 12/06/2017 |
| Applicant | Lock 27 Brewing LLC 1035 S Main St Centerville, OH 45458 UNITED STATES | | |

Goods/Services Affected by Opposition

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| Class 032. First Use: 2016/04/09 First Use In Commerce: 2016/05/01 All goods and services in the class are opposed, namely: Beer |
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Grounds for Opposition

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

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| U.S. Registration No. | 3552392 | Application Date | 10/26/2001 |
| Registration Date | 12/30/2008 | Foreign Priority Date | NONE |
| Word Mark | WICKED | | |

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|---------------------|--|
| Design Mark | WICKED |
| Description of Mark | NONE |
| Goods/Services | Class 032. First use: First Use: 2001/08/01 First Use In Commerce: 2001/08/01 BEER [AND ALE] |

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|------------------------------------|--------|------------------|------|
| U.S. Application/ Registration No. | NONE | Application Date | NONE |
| Registration Date | NONE | | |
| Word Mark | WICKED | | |
| Goods/Services | beer | | |

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| Attachments | 76330260#TMSN.png(bytes) Notice of Opposition_WICKED HOPSTA.pdf(31625 bytes) |
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| Signature | /Jaymie Kilgore/ |
| Name | Jaymie Kilgore |
| Date | 12/06/2017 |

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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: December 6, 2017

By 
Jaymie Kilgore

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

Spoetzl Brewery, Inc.,
Opposer,
vs.
Lock 27 Brewing LLC,
Applicant.

OPPOSITION NO.

NOTICE OF OPPOSITION

TO THE COMMISSIONER OF TRADEMARKS:

Spoetzl Brewery, Inc., a Texas corporation located at 14800 San Pedro Avenue, Suite 300, San Antonio, Texas 78232 (“Opposer”), believes it will be damaged by registration of the mark WICKED HOPSTA for beer in class 32 as shown in Application Serial No. 87/437,078, filed on May 4, 2017 by Lock 27 Brewing LLC (“Applicant”), and hereby opposes same.

Solely for the purpose of this proceeding, Opposer alleges the following as grounds for opposition:

1. Applicant seeks to register WICKED HOPSTA as a trademark for beer in International Class 32, U.S. Trademark Application Serial No. 87/437,078, based on

1 Applicant's alleged use of the mark in United States commerce, as evidenced by the publication
2 of such mark on August 8, 2017. Applicant's Application was filed on May 4, 2017.

3 2. Opposer is the owner of incontestable U.S. Trademark Registration No.
4 3,552,392 issued on December 30, 2008, for the mark WICKED for beer, in International Class
5 32, with a first use date of August 1, 2001, and constructive first use date of October 26, 2001,
6 both of which precede the filing date of Applicant's Application.

7 3. Applicant's WICKED HOPSTA mark is likely to cause confusion, mistake or to
8 deceive the public because it is virtually identical to Opposer's WICKED mark and the goods on
9 which Opposer uses Opposer's WICKED mark are virtually identical, substantially similar or
10 related to the goods identified in Applicant's Application and said goods are purchased by the
11 same group of consumers. Accordingly, Applicant's WICKED HOPSTA mark is confusingly
12 similar to Opposer's WICKED mark such that Applicant is not entitled to register the mark
13 WICKED HOPSTA, and Applicant's Application should be denied in accordance with Section
14 2(d) of the Trademark Act of 1946, 15 U.S.C. §1052(d).

15 4. Opposer avers that if Applicant is granted the registration herein opposed, it
16 would interfere with Opposer's exclusive right to use Opposer's WICKED mark herein relied
17 upon, all to the detriment and damage of Opposer. Accordingly, Opposer avers that for the
18 reasons set forth above, it will be damaged by a grant of registration to Applicant of the mark
19 WICKED HOPSTA in class 32 which is the subject of U.S. Trademark Application Serial No.
20 87/437,078.

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23 WHEREFORE, Opposer prays as follows:

- 24 1. That this Opposition be sustained;
- 25 2. That U.S. Trademark Application Serial No. 87/437,078 be rejected; and
- 26 3. That registration of the trademark WICKED HOPSTA shown and
27 specified in U.S. Trademark Application Serial No. 87/437,078 be
28 refused and denied as to class 32.

1 Please charge Opposer's counsel's Deposit Account #503564 the \$400 filing fee for the
2 Opposition, and any other fees which may be necessary to effectuate the filing of this
3 opposition.

4 Dated: December 6, 2017

DICKENSON, PEATMAN & FOGARTY

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7 By:  J. Scott Gerien
Joy L. Durand

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9 Napa, California 94559
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11 Attorneys for Opposer,
12 Spoetzl Brewery, Inc.

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