

ESTTA Tracking number: **ESTTA970544**

Filing date: **04/30/2019**

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	Detroit Rivertown Brewing Company, LLC
Granted to Date of previous extension	05/01/2019
Address	237 Jos Campau Detroit, MI 48207 UNITED STATES

Attorney information	Daniel Christopherson Lehrman Beverage Law, PLLC 2911 Hunter Mill Rd, Ste 303 Oakton, VA 22124 UNITED STATES dan.christopherson@bevlaw.com, trademarks@bevlaw.com 202-449-3739 x708
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**Applicant Information**

Application No	88068342	Publication date	01/01/2019
Opposition Filing Date	04/30/2019	Opposition Period Ends	05/01/2019
Applicant	RushNet Inc. 30370 Coyote Run Court Oak Creek, CO 80467 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: Alkaline drinking water; Drinking water
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**Grounds for Opposition**


Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)


**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	4844695	Application Date	03/10/2015
Registration Date	11/03/2015	Foreign Priority Date	NONE


Word Mark	ATWATER BREWERY BREWED IN DETROIT
Design Mark	
Description of Mark	The mark consists of an outside circle with the words "ATWATER BREWERY" along the top curve and the words "BREWED IN DETROIT" along the bottom curve, and an inside circle around a stylized image of a man in a hard hat extending his arm and holding a mug full of foamy beer.
Goods/Services	Class 032. First use: First Use: 2011/00/00 First Use In Commerce: 2011/00/00 Beer

U.S. Registration No.	4990461	Application Date	10/09/2015
Registration Date	06/28/2016	Foreign Priority Date	NONE
Word Mark	ATWATER BREWERY BORN IN DETROIT. RAISEDEVERYWHERE.		


Design Mark	
Description of Mark	The mark consists of an outside circle with the words "ATWATER BREWERY" along the top curve and the words "BORN IN DETROIT. RAISED EVERYWHERE." along the bottom curve, and an inside circle around a stylized image of a man in a hard hat extending his arm and holding a mug full of foamy beer.
Goods/Services	Class 032. First use: First Use: 2015/01/00 First Use In Commerce: 2015/01/00 Beer

U.S. Registration No.	5211191	Application Date	03/09/2017
Registration Date	05/23/2017	Foreign Priority Date	NONE
Word Mark	ATWATER SPIRITS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2015/00/00 First Use In Commerce: 2015/00/00 Distilled spirits		

U.S. Registration No.	5257512	Application Date	05/18/2016
Registration Date	08/01/2017	Foreign Priority Date	NONE

Word Mark	ATWATER'S SIGNATURE BOHEMIAN STYLE LAGER
Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 2016/00/00 First Use In Commerce: 2016/00/00 Beer

U.S. Registration No.	5670589	Application Date	08/16/2018
Registration Date	02/05/2019	Foreign Priority Date	NONE

Word Mark	ATWATER'S LAGER
Design Mark	
Description of Mark	The mark consists of a circular sector filled with a dark background, with the word "ATWATER'S" in a styled script and slanting slightly upward from left-to-right, a tail continuing from the S and looping back around to underline the word, and underneath is a smaller upper-case word "LAGER".
Goods/Services	Class 032. First use: First Use: 2011/00/00 First Use In Commerce: 2011/00/00 Beer

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	ATWATER IN THE PARK		
Goods/Services	BREW PUB; RESTAURANT AND BAR SERVICES		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	ATWATER GRAND RAPIDS		
Goods/Services	BREW PUB SERVICES; RESTAURANT AND BAR SERVICES		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	ATWATER GRAND RAPIDS		
Goods/Services	BREW PUB SERVICES; RESTAURANT AND BAR SERVICES		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	GROWLER GALLOP ATWATER		
Goods/Services	SPONSORING AND CONDUCTING ATHLETIC EVENTS		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	ATWATER RUNNING CLUB		
Goods/Services	CONDUCTING, ORGANIZING, AND SPONSORING ATHLETIC CLUBS		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	ATWATER'S BLOCKTOBERFEST		
Goods/Services	CONDUCTING A FESTIVAL FEATURING CRAFT BEERS		

Attachments	86559501#TMSN.png( bytes ) 86783285#TMSN.png( bytes ) 87365097#TMSN.png( bytes ) 87041138#TMSN.png( bytes ) 88080966#TMSN.png( bytes ) AWATER NoO.pdf(121346 bytes )
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Signature	/Daniel Christopherson/
Name	Daniel Christopherson
Date	04/30/2019

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

Detroit Rivertown Brewing Company, LLC,  
d/b/a Atwater Brewery

Opposer,

v.

RushNet Inc.,

Applicant.

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

Appl. Serial No. 88068342

Mark: AWATER

NOTICE OF OPPOSITION

Detroit Rivertown Brewing Company, LLC d/b/a Atwater Brewery, a Michigan limited liability company having its principal place of business at 237 Jos Campau, Detroit, Michigan 48207 (“Opposer”), believes that it would be damaged by registration of the word mark AWATER (“Applicant’s Mark”) as shown in U.S. Trademark Application Serial No. 8806342 (“Applicant’s Application”). Opposer alleges, as grounds for opposition, the following:

1. Opposer’s full name is Detroit Rivertown Brewing Company, LLC, and does business as Atwater Brewery.
2. Opposer owns the following U.S. Trademark Registrations and Application (Opposer’s Marks):
  - a. Registration No. 4,844,695 for a design mark with the literal element “ATWATER BREWERY BREWED IN DETROIT” for “Beer”;
  - b. Registration No. 4,990,461 for a design mark with the literal element “ATWATER BREWERY BORN IN DETROIT. RAISED EVERYWHERE.” for “Beer”;

- c. Registration No. 5,211,191 for the word mark “ATWATER SPIRITS” for “Distilled Spirits”;
  - d. Registration No. 5,257,512 for the word mark “ATWATER’S SIGNATURE BOHEMIAN STYLE LAGER” for “Beer”; and
  - e. Registration No. 5,670,589 for a design mark with the literal element “ATWATER’S LAGER” for “Beer” (collectively “Opposer’s Registered Marks”).
3. Opposer’s Registered Marks are valid and subsisting, in full force and effect, and constitute *prima facie* evidence of the validity of the marks and of Opposer’s exclusive right to use the Registered Marks in commerce in connection with the goods specified in the registration.
  4. Since as early as 1997, Opposer has owned and operated a brewery and brewpub in Michigan under the name “ATWATER.”
  5. Since opening its brewpub, Opposer has regularly served water and sparkling water under its house brand ATWATER.
  6. Opposer has developed a family of marks centered around the word “ATWATER,” including Opposer’s Marks and the following common law marks: the name of Opposer’s brewpub in Grosse Point, Michigan (“ATWATER IN THE PARK”); the name of Opposer’s brewpub in Grand Rapids, Michigan (“ATWATER GRAND RAPIDS”); the name of Opposer’s charity running event (“GROWLER GALLOP ATWATER”); the name of Opposer’s affiliated running group (“ATWATER RUNNING CLUB”); and the name of Opposer’s annual Oktoberfest event (“ATWATER’S BLOCKTOBERFEST”)

(collectively “Opposer’s Common Law Marks”; Opposer’s Registered Marks and Opposer’s Registered Marks shall collectively be referred to as the ‘ATWATER Family of Marks”).

7. Opposer has used one or more of the ATWATER Family of Marks in commerce in connection with the production, distribution, sale, and promotion of beer products across 23 states and the District of Columbia for more than 20 years.
8. Applicant RushNet Inc. (“Applicant”) is a Colorado corporation with its principal office address at 30370 Coyote Run Court, Oak Creek, Colorado 80467.
9. Applicant is the owner of U.S. Trademark Application Serial No. 88/068,342 for the word mark AWATER for “Alkaline drinking water; Drinking water,” which was filed under Trademark Act § 1(b) on August 7, 2018.

### **COUNT I**

#### **APPLICANT’S MARK SHOULD NOT BE REGISTERED BECAUSE IT WILL CAUSE A LIKELIHOOD OF CONFUSION WITH OPPOSER’S REGISTERED AND COMMON LAW MARKS (TRADEMARK ACT § 2(d))**

10. Opposer incorporates all previous paragraphs by reference.
11. Opposer’s Common Law Marks and Opposer’s Registered Marks are strikingly similar to Applicant’s Mark in appearance, sound, connotation, and commercial impression.
12. The first term in all of the ATWATER Family of Marks, “ATWATER,” is only one letter different from Applicant’s Mark “AWATER.”
13. The last two syllables and last five letters of the term “ATWATER,” “WATER,” are identical to Applicant’s Mark in spelling, and sound.
14. Beer and water products are similar goods that travel in similar channels of trade.



15. Opposer has regularly offered water and sparkling water to customers in connection with one or more of the ATWATER Family of Marks since as early as 1997.
16. A significant number of beer producers and brewpubs produce and sell both water products and beer products under the same brands.
17. Consumers are likely to mistakenly associate water products being sold under Applicant's Mark with Opposer, Opposer's Registered Marks, and Opposer's Common Law Marks.
18. Applicant's Mark so closely resembles Opposer's Common Law Marks and Opposer's Registered Marks, and Applicant's goods are so related to Opposer's goods, that Applicant's Mark will cause a likelihood of confusion with Opposer's Common Law Marks and Opposer's Registered Marks.
19. Applicant has never marketed or sold any goods in connection the mark "AWATER."
20. Each of Opposer's Common Law Marks and Opposer's Registered Marks has priority over Applicant's Mark.
21. It is likely that a potential consumer would be confused, mistaken, or deceived as to the source of the goods sold under Applicant's Mark.

## **COUNT II**

### **APPLICANT'S MARK SHOULD NOT BE REGISTERED BECAUSE IT WILL CAUSE A LIKELIHOOD OF DILUTION BY BLURRING OF OPPOSER'S REGISTERED MARKS AND OPPOSER'S COMMON LAW MARKS (Trademark Act 43(c))**

22. Opposer incorporates all previous paragraphs by reference

23. Through such widespread use, Opposer has acquired and developed extensive goodwill and consumer recognition through its substantial marketing, advertising, promotion, distribution, and sale of its products under the ATWATER Family of Marks.
24. Through its substantial expenditures of time, effort, and other resources in connection with Opposer's continuous use and promotion of the ATWATER Family of Marks, Opposer has established a public perception of the ATWATER Family of Marks as an exclusive indicator of source for Opposer's goods and related goods.
25. As a result of the regular, extensive, and well-publicized use of the ATWATER Family of Marks, the ATWATER Family of Marks are famous in the United States and are associated exclusively with Opposer and its high quality products.
26. Opposer has used the ATWATER Family of Marks in advertising and marketing of its goods and its endorsements of charitable events and athletic clubs.
27. One or more of the marks that make up the ATWATER Family of Marks is a famous mark.
28. Applicant's Mark dilutes or is likely to dilute the distinctive character of one or more of the ATWATER Family of Marks.

### **STANDING**

29. Opposer would be damaged by Applicant's registration of Applicant's Mark because Opposer has a reasonable belief that Applicant's Mark and Applicant's goods will create confusion with one or more of Opposer's Common Law Marks and/or Opposer's Registered Marks.

30. Opposer would be damaged by Applicant's registration or use of Applicant's Mark because Applicant's use of a similar mark to Opposer's Common Law Marks and Opposer's Registered Marks on similar and/or related products would dilute the distinctive quality and value of Opposer's Common Law Marks and Opposer's Registered Marks.

31. Opposer would be damaged by Applicant's registration or use of Applicant's Mark because Applicant's use of a similar mark to Opposer's Common Law Marks and/or Opposer's Registered Marks on related products would create confusion for consumers, and would otherwise impinge Opposer's ability to seek trademark registrations for Opposer's Common Law Marks.

WHEREFORE, Opposer prays that the Board sustain Opposer's Opposition and refuse the registration of Applicant's Mark.

Respectfully submitted,

Detroit Rivertown Brewing Co., LLC  
d/b/a Atwater Brewery

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