

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

HIGH SIERRA FOOD SERVICES, INC.,	)	
	)	
Petitioner,	)	
	)	Cancellation No. 29,933
v.	)	
	)	
LAKE TAHOE BREWING COMPANY, INC.,	)	Mark: LAKE TAHOE
	)	BREWING COMPANY
Registrant/Respondent.	)	& Design
	)	
	)	
	)	
	)	

REBUTTAL TESTIMONIAL DECLARATION OF STEPHEN C. DOWNING  
PURSUANT TO 37 C.F.R. § 2.20

I, Stephen C. Downing, declare as follows:

- As previously indicated, I am the Secretary and CEO of High Sierra Food Services, Inc. ("High Sierra"), the Petitioner in the above cancellation action. I have personal knowledge of the facts stated herein, and if called to do so could and would testify completely thereto.

Timing of Filing of Petition to Cancel

- In approximately December 1997, I received a copy of the first Office Action issued by the U.S. Patent and Trademark Office ("PTO") in response to the trademark application I filed to register "Tahoe Beer" as a trademark for use in connection

with beer. (The application was filed in the name of Truckee Brewing Company which is a fictitious business name of Petitioner.) The PTO Office Action initially refused registration based on the prior registration of the Lake Tahoe Brewing Company (and design) mark that Petitioner now seeks to cancel.

2. While I had known about Lake Tahoe Brewing Company before receiving a copy of the Office Action, I was not familiar with the rules applicable to trademark applications and their review. In the process of considering how to respond to the Office Action, I personally researched the trademark rules by reviewing materials provided to me by my counsel, at my request. The materials I reviewed included sections of the Trademark Manual of Examining Procedure, and copies of cases related to trademark applications.
3. After I got "up to speed" on some of the trademark rules, I concluded that the Lake Tahoe Brewing Company mark had been obtained by fraud and deception, because the goods were not being made at Lake Tahoe or in the Lake Tahoe area. Before reading up on the rules, I was not even aware that a registration could be obtained fraudulently.

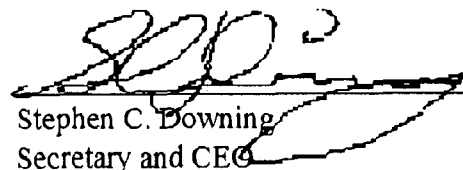
#### BATF Label Review

1. At about the same time that I was getting up to speed on trademark registration rules, I also researched and read the rules related to approval of beer labels by the federal Bureau of Alcohol, Tobacco and Firearms (the "BATF"). While I knew BATF rules generally, previously I had relied on an employee of Petitioner to research the rules and relay key information to me.
2. In checking the BATF rules more closely, I was struck by the similarity in trademark and BATF rules in that both require authenticity with regard to designations of geographic origin. Based on the rules, and the ability to request that the BATF investigate geographic misdesignations, I inferred that the BATF had the authority

to enforce geographic designation requirements if it wishes to.

3. At the same time, I know and have known since Petitioner began doing business, that as a general matter, the BATF's review of labels is more technical than the PTO's review of trademark applications. For example, in Petitioner's experience, the BATF will check a label for size of type, punctuation, provision of required government warnings and strict compliance with other statutory labeling requirements. But very often, it is possible to have someone in Washington, D.C., walk a label application into the BATF, have it checked and obtain approval within one day. Petitioner has received label approvals on such a short turnaround more than once. Thus, while BATF regulations contain requirements relating to geographic designation, I do not believe that systematically confirming the requirements are met is a part of the BATF label reviewers' task.
4. The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the petition, declares that he is properly authorized to execute this declaration on behalf of Petitioner; and that all statements made of his own knowledge are true and that all statements made on information and belief are believed to be true.

Executed on September 23, 2002, at Truckee, California.



Stephen C. Downing  
Secretary and CEO  
High Sierra Food Services, Inc.

1  
2 Case Name: *High Sierra Food Services, Inc. v. Lake Tahoe Brewing Company, Inc.*

3 Case No: TTAB Cancellation No. 29,933

4 **PROOF OF SERVICE BY MAIL**

5 I declare as follows:

6 I am employed in the County of Sacramento, California; I am over the age of 18 years, and not a party to  
7 the within action; my business address is: 451 Arden Way, Sacramento, California 95815. I am readily  
8 familiar with my employer's business practice for collection and processing of correspondence for  
mailing with the United States Postal Service.

9 On September 24, 2002, I served a copy, with all exhibits, if any, of the following document:

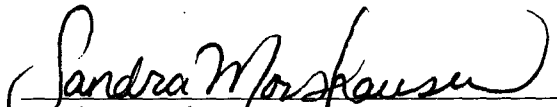
10 **REBUTTAL TESTIMONIAL DECLARATION OF STEPHEN C. DOWING**

11 on the interested parties named below, in Case No. TTAB Cancellation No. 29,933 by following  
12 ordinary business practice, placing a true copy thereof enclosed in a sealed envelope, for collection and  
13 mailing with the United States Postal Service where it would be deposited for first class delivery,  
14 postage fully prepaid, in the United States Postal Service that same day in the ordinary course of  
business, addressed as follows:

15 **Craig M. Stainbrook, Esq.**  
16 **Johnson & Stainbrook**  
17 **3550 Round Barn Blvd., Suite 203**  
18 **Santa Rosa, CA 95403**  
19 **Attorney for Respondent**

**Telephone: 707-578-9333**  
**Facsimile: 707-578-3133**

20 I declare under the penalty of perjury under the laws of the State of California that the foregoing is true  
21 and correct and that this declaration was executed on September 24, 2002, at Sacramento, California.

22   
23 Sandra Morshauer

TTAB



09-30-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #26

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TRADEMARK TRIAL AND  
APPEAL BOARD  
02 OCT - 7 AM 12:30

TO THE TRADEMARK TRIAL AND APPEAL BOARD

Transmitted herewith are the following:

- ~~7~~ Rebuttal Testimonial Declaration of Stephen C. Downing;
- ~~8~~ Proof of Service by Mail;
- ~~7~~ Postcard Receipt.

Kim J. Mueller, Esq.  
Law Offices of Kim J. Mueller  
451 Arden Way  
Sacramento, CA 95815  
(916) 565-1400

Dated: September 24, 2002

"Federal Express" mailing label No. 836382028633

Date of Deposit: September 24, 2002

I hereby certify that the attached Rebuttal Testimonial Declaration of Stephen C. Downing; Proof of Service by Mail; and Postcard Receipt (on behalf of HIGH SIERRA FOOD SERVICES, INC.) are being deposited with Federal Express for 2<sup>nd</sup> business day delivery on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, Box TTAB/No Fee, 2900 Crystal Drive, Arlington, VA 22202-3513.

Sandra Morshauser

(Typed name of person mailing paper or fee)

(Signature of person mailing paper or fee)

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