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

Proceeding	92051014
Party	Defendant "WHITE GOLD", LLC
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Date	07/22/2010
Attachments	Answer.pdf ( 18 pages )(562288 bytes )

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

MECKATZER LÖWENBRÄU	)	
BENEDIKT WEIß KG,	)	
	)	
Petitioner,	)	Cancellation No. 92051014
	)	
v.	)	
	)	
WHITE GOLD, LLC,	)	
	)	
Respondent.	)	
	)	

**ANSWER**

Respondent, WHITE GOLD, LLC (“Respondent”), by counsel, by way of its Answer to the First Amended Petition for Cancellation filed in this matter by Petitioner, MECKATZER LÖWENBRÄU BENEDIKT WEIß KG (“Petitioner”), hereby states as follows:

1. Respondent denies the allegations contained in Paragraph 1 of the First Amended Petition for Cancellation. Specifically, upon information and belief, Petitioner has not engaged in the marketing, sale, promotion and/or distribution of a wide variety of alcoholic and non-alcoholic beverages. Rather, the website of Petitioner indicates that it has primarily, if not exclusively, produced a single beverage, beer. Attached as Exhibit “A” are printouts from Petitioner’s website (translated from German using Google translator).
  
2. Respondent admits the allegations contained in Paragraph 2 of the First Amended Petition for Cancellation.

3. Respondent does not have knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 3 of the First Amended Petition for Cancellation, and therefore denies the allegations, demanding strict proof thereof.

4. Respondent admits the allegations contained in Paragraph 4 of the First Amended Petition for Cancellation.

5. Respondent does not have knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 5 of the First Amended Petition for Cancellation, and therefore denies the allegations, demanding strict proof thereof.

6. Respondent does not have knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 6 of the First Amended Petition for Cancellation, and therefore denies the allegations, demanding strict proof thereof.

7. Respondent admits the allegations contained in Paragraph 7 of the First Amended Petition for Cancellation.

8. Respondent denies the allegations contained in Paragraph 8 of the First Amended Petition for Cancellation. Specifically, Respondent instructed its attorney that use commenced with certain products and Respondent's attorney prepared, signed and filed a Statement of Use inconsistent with these instructions. Therefore, Respondent did not act with an intent to defraud the U.S.P.T.O.

9. Paragraph 9 sets forth conclusions of law to which no response is required. To the extent a response is required, Respondent denies allegations contained in Paragraph 9 of the First Amended Petition for Cancellation.

10. Paragraph 10 sets forth conclusions of law to which no response is required. To the extent a response is required, Respondent denies allegations contained in Paragraph 10 of the First Amended Petition for Cancellation.

11. Unless otherwise expressly admitted in this Answer, all of Petitioner's allegations in the First Amended Petition for Cancellation are otherwise denied.

### **AFFIRMATIVE DEFENSES**

1. Petitioner is the proprietor of (i) Application Serial No. 79/025,059 for the mark WEISS-GOLD for "*beers, brewed malt-based alcoholic beverages; mineral waters, aerated waters; fruit juices, fruit juices containing crushed fruit, fruit drinks and lemonades or other carbonated soft drinks*" in International Class 32 and "*alcoholic beverages, namely, potable spirits and liqueurs*" in International Class 33, filed on April 10, 2006 in the United States Patent and Trademark Office under Section 66(a) of the Trademark Act, and (ii) Application No. 79/038,317 for the mark MECKATZER MECKATZER LÖWENBRÄU WEISS GOLD & Design for "*beers; mineral and aerated waters; other non-alcoholic drinks, namely, carbonated beverages, Non-alcoholic punch; fruit drinks and fruit juices; syrups for making beverages; other preparations for making beverages, namely, Concentrates or powders used in the preparation of soft drinks, Non-alcoholic fruit extracts used in the preparation of beverages; non-alcoholic aperitifs; beer-mix beverages, namely, Beer-based coolers; powders for effervescing beverages, namely, effervescent powders used in the preparation of isotonic sports drinks and sports beverages; non-alcoholic cocktails, namely, Non-alcoholic cocktail mixes; essences for making beverages, namely, Essences for the preparation of mineral waters not in the nature of essential oils, Essences for use in making soft drinks not in the nature of essential*"

*oils; extracts of hops for making beer; non-alcoholic fruit beverages; non-alcoholic fruit extracts, namely, Non-alcoholic fruit extracts used in the preparation of beverages; nonalcoholic fruit nectars; fruit juices; vegetable juices; ginger beer; isotonic beverages, namely, Isotonic drinks; preparations for making liqueurs, namely, Essences for the manufacture of liqueurs not in the nature of essential oils; lemonades; syrups for making lemonade; malt beer; malt wort; non-alcoholic peanut milk; preparations for making mineral waters; unfermented must; sherbet beverages; unfermented apple must; table waters; tomato juice; unfermented grape must; beer wort*” in International Class 32, filed on February 19, 2007 in the United States Patent and Trademark Office under Section 66(a) of the Trademark Act (collectively, the “Applications”).

2. Upon information and belief, the term “LÖWENBRÄU” translates from German to English as “lion’s brew.”

3. Upon information and belief, as required under Section 66(a) of the Trademark Act, the Applications included declarations stating that Petitioner has a *bona fide* intent to use its marks in commerce.

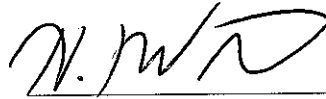
4. Upon information and belief, Petitioner has engaged primarily, if not exclusively, in the marketing, sale, promotion and/or distribution of a single product, beer, in its 300 year history. Attached as Exhibit “A” are printouts from Petitioner’s website (translated from German using Google translator). The company’s website refers to only a single product – beer - in its history and product line.

5. Upon information and belief, at the time the Applications were filed, Petitioner knowingly made false, material misrepresentations of fact in filing the Applications with the intent to defraud the U.S.P.T.O. Specifically, upon information and belief, Petitioner lacked a *bona fide* intent to use its mark with *all* of the goods referenced in the Applications.

6. Accordingly, Petitioner has committed the very same acts for which it complains and for which it seeks relief from this Board. Petitioner's claims are therefore barred under the doctrine of unclean hands.

WHEREFORE, the foregoing considered, Respondent respectfully requests that the First Amended Petition for Cancellation be dismissed with prejudice.

Respectfully submitted,  
WHITE GOLD, LLC



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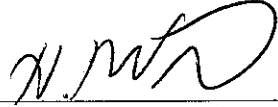
Joshua B. Goldberg  
H. David Starr  
Attorneys for Respondent

Dated: July 21, 2010  
THE NATH LAW GROUP  
112 S. West Street  
Alexandria, Virginia 22314  
(703) 548-6284 Phone  
(703) 683-8396 Fax

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11 day of July 2010, a true and correct copy of the foregoing was served by first class mail, postage pre-paid, on the following:

Robert M. Wasnofski, Jr.  
Dorsey & Whitney LLP  
250 Park Avenue  
New York, NY 10177-1500

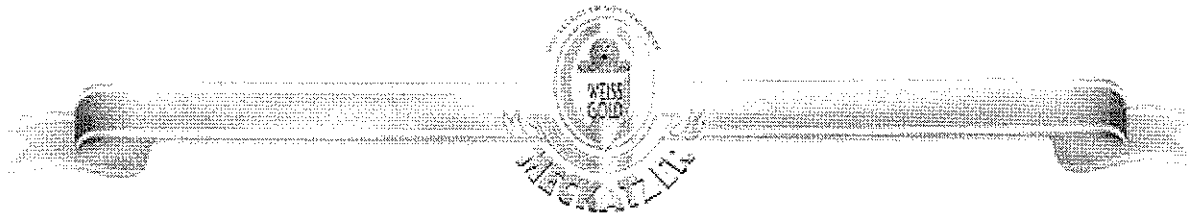


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H. David Starr

# **EXHIBIT "A"**





## Weitere Meckatzer Biere

In addition to the Meckatzer white gold we brew our own beers Meckatzer more. They contain ingredients from controlled-integrated farming - for example, two-row barley malt and hops finest Tettnang flavor - even bred yeasts, fresh water from the Alps and a lot of patience and love. Because we still brewing in the traditional practices and have our beers at low temperatures to ferment and mature. That takes time. And it ensures the superior quality of the beers. You can see, smell, taste and feel on the digestibility.

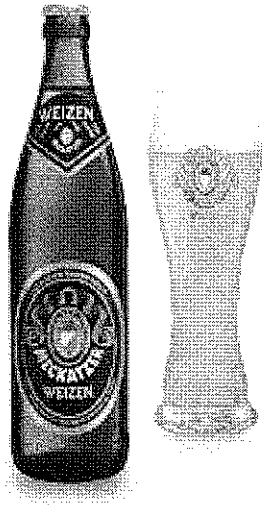


## Meckatzer Radler

The Meckatzer Radler is a unique beer mixed drink made from white gold and Meckatzer sugar-sweetened lemonade.

**Alcohol: 2.8% vol.**

**Calories: 220 Kcal. / 0,5 l**



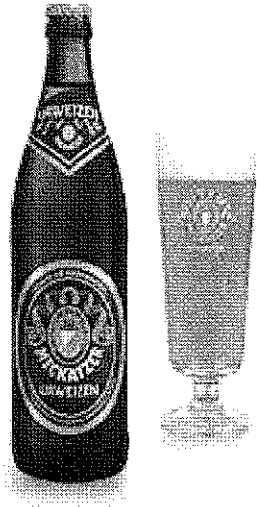
## Meckatzer wheat

The wheat Meckatzer delighted connoisseurs for its distinctive, rounded flavor of wheat. Our specially bred yeast ensures a harmonious blend of typical wheat beer-flavor components.

**Original gravity: 12.6%**

**Alcohol: 5.2% vol.**

**Calories: approximately 235 Kcal. / 0,5 l**



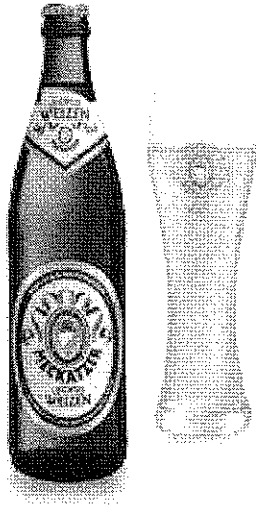
## Meckatzer Urweizen

The Meckatzer Urweizen fulfilled the wishes of a dark wheat beer, naturally. It owes its dark color and fine taste of his round Caramel.

**Original gravity: 12.6%**

**Alcohol: 5.2% vol.**

**Calories: approximately 235 Kcal. / 0,5 l**



## Meckatzer Light Wheat

Meckatzer Light wheat tastes so full, because it is a priori independently brewed and fermented with fine Meckatzer pure culture yeast in the bottle.

**Original gravity: 7.8%**

**Alcohol: 2.9% vol.**

**Calories: 140 Kcal. / 0,5 l**



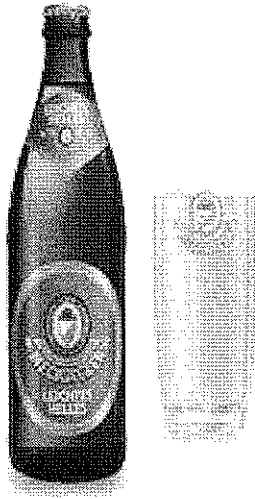
## Meckatzer Pils

The Meckatzer Pils is distinguished by its balanced taste. The soft start and the delicate bitterness it owes the greatest care in the entire brewing process, and especially gentle filtration. Very finest Tettnang aroma hops gives it a refined and distinctive hop flower.

**Original gravity: 11.4%**

**Alcohol: 4.8% vol.**

**Calories: about 215 cal. / 0,5 l**



## Meckatzer Bright Light

Meckatzer Bright Light in comparison to the Meckatzer Weiss-Gold 40% less alcohol and calories. It tastes due to its special recipe spicy and surprisingly full-bodied.

**Original gravity: 7.8%**

**Alcohol: 2.9% vol.**

**Calories: 140 Kcal. / 0,5 l**



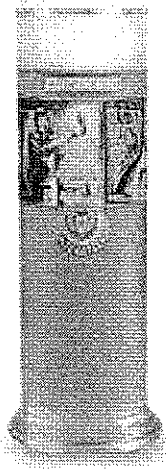
## **Fest-Märzen Meckatzer**

The Meckatzer fixed-Märzen is a specially brewed in March for Christmas beer. Through an original gravity of 13.5% and the addition of fine Spezialmalze it gets its distinctive, full-bodied malty aroma and touch.

**Original gravity: 13.5%**

**Alcohol: 5.5% vol.**

**Calories: 260 Kcal. / 0,5 l**



## Meckatzer Zwickelbier

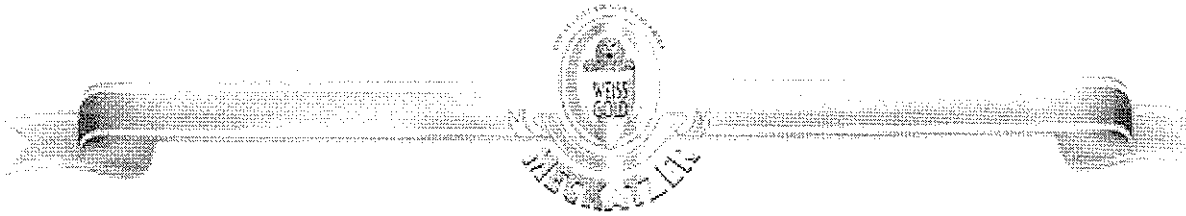
The amber Meckatzer Zwickel beer is a pale stand-alone type of beer. It is, after it is mature in peace from the storage tank is filled into the barrel - without the usual filtration. This causes the turbidity and gives the beer its unique flavor attributes: slightly yeasty fruity, soft and very drinkable.

**Original gravity: 11.9%**

**Alcohol: 5.0% vol.**

**Calories: 220 Kcal. / 0,5 l**





## Werdegang

Gebhard Weiss and Lena in 1853 acquired the country brewery to Meckatz. They justified in the family's passion to brew beer. As the history of a firm shows we submit for both conventions market trends, but preserve the future of our tradition. A task, which is now in 4th Michael White Generation is: a value philosophy, which provides - in the joint cooperation between companies, suppliers and customers - in addition to the economic and the ecological and social sustainability.

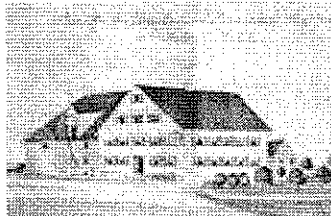
1738

Josef Fässler founded the brewery Meckatzer to the lion. In the sparsely populated West Allgäu in the next 115 years will change thirteen of the owners.



1853

Gebhard Weiss, 29 years old and a trained brewer, acquired the brewery located in bankruptcy land and married a few months later, the 25 year old daughter from host Scheffau - his wife Lena. Together they built from the run-down operation. Your beer is becoming beyond the borders of Meckatz out of popularity.



1873

With only 49 years dies Gebhard Weiss. His widow, Lena is suddenly alone in the responsibility for the six children - the eldest son, Benedict has just 16 - and the brewery. It shows courage, decides against the sale and transfer the operation active, to continue to their death in 1885 for the family and the employees.



1902

Benedict White (points in the picture with his wife, Antonia), brewer since 1877 in the mother and sole owner of the brewery from 1896 to the family business by building a fitted according to modern brewery operations the way in the future.



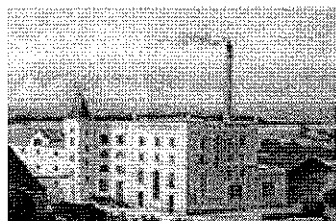
1905

Also shows absatzpolitisch Benedict White entrepreneurial vision. In 1905 he applied for at the Imperial Patent Office in Berlin, the trademark registration for the Meckatzer white gold. It is validly registered in 1908 as the first Allgäuer beer brand.



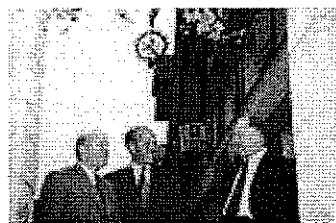
1914

More and more Allgäuer enjoy the beer brand Meckatzer white gold. The output of the brewery is up from 6000 hl in 1900 to 14,000 hectoliters in 1914. A preliminary record. For now the First World War shattered the country and in the ensuing years, the inflation rates to rise indefinitely.



1926

Benedict's eldest son Joseph White, a graduate Dipl.-brewer, joins as managing director in the family business. 1927 followed by son Edmund, Dipl.-Kaufmann. The youngest, George, is also Dipl.-brewer and pushes it in 1934. The three of them succeeds, the company saved about the Nazi era, World War II and the postwar troubles away.



1950

The period of government-imposed small beer is over. As of 1950, may again Meckatzer the original white gold are brewed from 12.6% with its malt content. It develops in the coming decades, the most popular beer brand of the Allgäu.



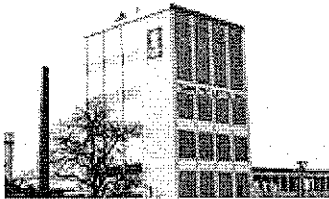
1965

With Benedict White, son of Joseph, draws the fourth Generation in a family brewery. The Dipl.-Kaufmann Dipl. Brauingenieur and will steer the company from 1971 to 1982 together with his uncle, George White and then by 1993 as the sole managing partner.



1975

Beer connoisseurs appreciate the Meckatzer beers. To stay even with the ever increasing demand for their own quality demands, repeatedly extension and alterations are necessary. In 1974/1975 Sudjahr first time over 100,000 hectoliters of beer are expelled.



1985

Michael White, the son of Georg occurs after training as a brewer and Dipl.-Kaufmann Dipl.-also the company. Along with his Cousin Benedict, he draws in trusting and successful cooperation, the fate of the company.



1993

After the sudden death of Benedict, Michael White takes over the sole management. He directed the company for a value-oriented philosophy of sustainability and is a frontrunner for a new restaurant culture.

