

ESTTA Tracking number: **ESTTA754166**

Filing date: **06/23/2016**

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

Proceeding	92063525
Party	Defendant Moonlight Meadery LLC
Correspondence Address	HADI S. AL-SHATHIR THOMPSON COBURN LLP ONE US BANK PLAZA ST. LOUIS, MO 63101 UNITED STATES hal-shathir@thompsoncoburn.com, jschwent@thompsoncoburn.com, ipdock- et@thompsoncoburn.com, urogers@thompsoncoburn.com
Submission	Answer
Filer's Name	Hadi S. Al-Shathir
Filer's e-mail	hal-shathir@thompsoncoburn.com, jschwent@thompsoncoburn.com, ipdock- et@thompsoncoburn.com, urogers@thompsoncoburn.com
Signature	/s/ Hadi S. Al-Shathir
Date	06/23/2016
Attachments	answer and defenses.PDF(82928 bytes )

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

Moonlight Brewing Company,	)	
	)	
Petitioner,	)	TTAB Canc. No. 92063525
	)	
v.	)	U.S. Reg. No. 4076907
	)	
Moonlight Meadery LLC,	)	Mark: MOONLIGHT MEADERY
	)	
Respondent.	)	

**Moonlight Meadery LLC's Answer and Defenses**

**Answer**

This is Respondent Moonlight Meadery LLC's ("Respondent") Answer to the Petition for Cancellation filed by Petitioner Moonlight Brewing Company ("Petitioner"). To the extent any allegation of the Petition for Cancellation is not expressly and specifically admitted, that allegation is hereby denied.

Respondent answers the Petition for Cancellation as follows:

1. Respondent lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 1 and therefore denies them.
2. Respondent lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 2 and therefore denies them.
3. Respondent denies that Petitioner has "exclusively and continuously used the MOONLIGHT mark." Respondent lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 3 and therefore denies them.
4. Respondent lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 4 and therefore denies them
5. Respondent denies the allegations of paragraph 5.

6. Respondent denies the allegations of paragraph 6.
7. Respondent incorporates the above responses by reference.
8. Respondent lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 8 and therefore denies them.
9. Respondent admits that it has been using its MOONLIGHT MEADERY mark since at least as early as 2006.
10. Respondent admits that it has been using its MOONLIGHT MEADERY mark in commerce since at least as early as 2010.
11. Respondent denies the allegations of paragraph 11.
12. Respondent denies the allegations of paragraph 12.
13. Respondent lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 13 and therefore denies them.
14. Respondent denies the allegations of paragraph 14.

### **Defenses**

For its defenses, Respondent states:

1. Petitioner's Petition for Cancellation fails to state a claim upon which relief may be granted.
2. Petitioner's U.S. Serial No. 86/339,183 for the mark MOONLIGHT BREWING COMPANY is void *ab initio*. The application is based on use in commerce, but on information and belief, Petitioner is not using MOONLIGHT BREWING COMPANY in commerce. Petitioner's website states that its beers are only available for purchase in California.
3. There is no likelihood of confusion between the parties' respective marks, as already admitted by Petitioner. Petitioner is the defendant in an opposition brought by Moonlite

Bar-B-Q Inn, Inc. (TTAB Opp. No. 91222542). In its defenses to the notice of opposition, Petitioner admits, among other things, that the term MOONLIGHT is “diluted and weak in the marketplace,” and that there is no likelihood of confusion because wine and beer “are so distinct and in different international classes that consumers are unlikely to be confused.” Similarly here, there is no likelihood of confusion. The MOONLIGHT element is weak, and therefore, the overall differences in the marks and goods are sufficient to avoid consumer confusion.

4. Petitioner’s claim is barred by the defenses of estoppel and unclean hands. In its defense of TTAB Opp. No. 91222542, Petitioner takes the position that there is no likelihood of confusion between MOONLITE for wine and MOONLIGHT BREWING COMPANY for beer because of the weakness of the terms MOONLIGHT/MOONLITE and the differences between wine and beer. In this proceeding, Petitioner takes the contrary position, and therefore, is acting in bad faith by attempting to manipulate the judicial system. Accordingly, Petitioner should be precluded from taking a contrary position in this proceeding.

5. Petitioner’s claim is barred by the defenses of waiver, estoppel, acquiescence and laches. Petitioner has been aware of Respondent’s MOONLIGHT MEADERY mark, and the application therefor, since at least as early as May 2011. Yet, Petitioner waited almost five years to file its petition to cancel. During this lengthy time period, Respondent made significant investments in its MOONLIGHT MEADERY mark. Petitioner’s inexcusable delay has materially prejudiced Respondent.

6. Respondent reserves its right to amend its answer to assert any defense or counterclaim that is later discovered in this proceeding.

ACCORDINGLY, Respondent respectfully requests that the Board enter judgment in Respondent's favor, dismiss the Petition for Cancellation with prejudice, and grant all other and further relief to which Respondent is entitled.

Respectfully submitted,

By: /s/ Hadi S. Al-Shathir  
Jason M. Schwent  
Hadi S. Al-Shathir  
THOMPSON COBURN LLP  
One US Bank Plaza  
St. Louis, MO 63101  
(314) 552-6000  
jschwent@thompsoncoburn.com  
hal-shathir@thompsoncoburn.com  
ipdocket@thompsoncoburn.com  
urogers@thompsoncoburn.com

Attorneys for Respondent  
Moonlight Meadery LLC

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Answer and Defenses was sent via First Class Mail, postage prepaid, this 23<sup>rd</sup> day of June, 2016, to the following:

Candace L. Moon  
The Craft Beer Attorney, APC  
5095 Murphy Canyon Road, Suite 240  
San Diego, CA 92123

/s/ Hadi S. Al-Shathir