

ESTTA Tracking number: **ESTTA1065582**

Filing date: **07/01/2020**

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

Proceeding	92074275
Party	Plaintiff Sante Adairius LLC
Correspondence Address	CANDACE L MOON THE CRAFT BEER ATTORNEY APC 2260 EL CAJON BLVD #412 SAN DIEGO, CA 92104 UNITED STATES candace@craftbeerattorney.com 619-787-3694
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Candace L Moon
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Signature	/clm/
Date	07/01/2020
Attachments	Opposition to Motion to Dismiss_Sante Adairius .pdf(185267 bytes)

1 **ARGUMENT**

2 **RESPONDENT’S MOTION TO DISMISS SHOULD BE DENIED**

3 **A. Petitioner States A Claim for Cancellation That Is Plausible On Its Face**

4 Section 45 of the Trademark Act, 15 U.S.C. §1127, defines "commerce" as "all
5 commerce which may lawfully be regulated by Congress." Section 45 defines "use in
6 commerce" as follows:

7 The term "use in commerce" means the bona fide use of a mark in the
8 ordinary course of trade, and not made merely to reserve a right in a mark. For
9 purposes of this Act, a mark shall be deemed to be in use in commerce--

10 (1) on goods when—

11 (A) it is placed in any manner on the goods or their containers or the displays
12 associated therewith or on the tags or labels affixed thereto, or if the nature of the
13 goods makes such placement impracticable, then on documents associated with
14 the goods or their sale, and

15 (B) the goods are sold or transported in commerce, *and*

16 *(2) on services when it is used or displayed in the sale or advertising of services*
17 *and the services are rendered in commerce, or the services are rendered in more*
18 *than one State or in the United States and a foreign country and the person*
19 *rendering the services is engaged in commerce in connection with the services.*

20 (emphasis added)

21 First, Respondent admits that it only sells its goods in one state—California.

22 (Respondent’s Motion, p.3, lines 3-5). Respondent then goes on to argue that its sales within one
23 state constitute use in commerce because those sales are somehow regulated by Congress. This is
24 inaccurate.

25 Respondent specifically states that “[t]here is also no question that Congress can and does
26 heavily regulate the production and sale of beer.” (Motion, p.4, lines 11-12). However,
27 Respondent overlooks that the method through which Congress regulates the sale of beer is
28 through the Tax and Trade Bureau (TTB). A beer manufacturer that wishes to sell beer across
state lines must obtain Certificate of Label Approval/Exemption (COLA), which in that case
would trigger a regulation by Congress. As of the filing of the Cancellation, Respondent had not

1 obtained a COLA, and thus had not triggered federal regulation of its goods. Moreover, the
2 federal government, through the 21st Amendment granted states the specific power to regulate
3 alcoholic beverages; thus, the sale within a single state, with no COLA obtained from the federal
4 government is not regulated by Congress, but instead the government of that single state. And as
5 such, Respondent did in fact plead a plausible false statement that its use constitutes a use in
6 commerce since it does not trigger any use that is regulated by Congress. Thus, Petitioner’s
7 cancellation does “contain sufficient factual allegations to raise a right to relief above the
8 speculative level.”

9
10 **CONCLUSION**

11 For the foregoing, the Board should DENY Respondent’s Motion to Dismiss. Petitioner
12 has a legal basis for the relief sought.

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16 DATED: July 1, 2020

Respectfully submitted,

The Craft Beer Attorney

18 */s/ Candace L. Moon*

19 By:

20 CANDACE L. MOON
21 Attorney for Petitioner
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1 **CERTIFICATE OF SERVICE**

2 On July 1, 2020, I caused to be served the foregoing document described as follows:

3 PETITIONER’S OPPOSITION MOTION TO DISMISS CLAIM 2

4 on Respondent by placing a true copy thereof in an e-mail to:

5
6 PAUL W. REIDL
7 LAW OFFICE OF PAUL W. REIDL
8 25 Pinehurst Lane
9 Second Floor
10 HALF MOON BAY, CA 94019
11 paul@reidllaw.com

12 Executed on July 1, 2020, San Diego, California.

13 By: */s/ Candace L. Moon*
14 _____
15 CANDACE L. MOON
16 Attorney for Petitioner
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