

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**J & J MARTINDALE VENTURES, LLC, a  
Texas Limited Liability Company**

**Plaintiff,**

**v.**

**EAST END BREWING COMPANY, INC., a  
Pennsylvania Corporation**

**Defendant.**

**CIVIL ACTION NO. 5:15-CV-876**

***Jury Trial Requested***

**COMPLAINT FOR DECLARATORY JUDGMENT**

This is an action for declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Plaintiff, J & J Martindale Ventures, LLC (hereinafter “J&J”), for its Complaint against Defendant, East End Brewing Company, Inc. (hereinafter “East End”), states and alleges as follows:

**PARTIES**

1. J&J is a Texas limited liability company, with its principle place of business at 1814 Edge Hill Drive, San Antonio, Texas 78209.
2. East End is, on information and belief, a Pennsylvania corporation with its principle place of business at 147 Julius Street, Pittsburgh, Pennsylvania 15206.

**JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over J&J’s federal claims, pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338 in that this Complaint raises federal questions under the Lanham Act, 15 U.S.C. § 1051 et seq. Additionally, this Court has subject matter jurisdiction over J&J’s unfair competition claims pursuant to 28 U.S.C 1338(b), and over Plaintiff’s remaining claims pursuant to 28 U.S.C. § 1367(a).

4. This Court has personal jurisdiction over East End, at least for the reason that East End has threatened J&J with legal action under the Lanham Act, J&J being located within the Western District of Texas. Further, East End has repeatedly contended that East End has a nationwide presence and a nationwide reputation under the mark BIG HOP, which mark is in dispute in this litigation.

5. Venue is proper in this Court under 28 U.S.C. § 1391(b) and (c), since a substantial part of the events giving rise to J&J's claim occurred in this district and since East End is subject to personal jurisdiction in this district.

### **FACTUAL BACKGROUND**

6. On July 31, 2012, J&J was created for the purpose of providing bar and restaurant services under the name BIG HOPS. The first location at 8313 Broadway, San Antonio, Texas 78209 opened for business under the name BIG HOPS on or about March 18, 2013, which location provided restaurant and bar services.

7. Due to the success of the first BIG HOPS location, a second BIG HOPS was opened at 11224 Huebner Road, Suite 204, San Antonio, Texas 78230 on or about December 12, 2014.

8. Due to the success of the first two BIG HOPS locations, a third BIG HOPS location was opened at 306 Austin St., San Antonio, Texas 78215 on or about March 6, 2015. All three locations have the same name and a similar theme or motif.

9. J&J is in the process of opening a fourth location under the name BIG HOPS.

10. At each of the locations, the term BIG HOPS is used, not only for the name of the facility, but also on many items contained within the restaurant and bar. The term BIG HOPS is used on at least the following items:

(a) refillable growlers

- (b) beer glasses and mugs
- (c) beer cans filled from a tap
- (d) beer containers
- (e) shirts
- (f) caps
- (g) filling levers
- (h) wall signage
- (i) menu boards
- (j) t-shirts

11. J&J has an Internet presence under [www.bighops.com](http://www.bighops.com), where all of the events at each location is made known to the purchasing public. The beers on tap are listed on the website. The location of each BIG HOPS restaurant and bar is given on the website.

12. The BIG HOPS restaurants and bars operated by J&J extensively use social media, especially Facebook. On Facebook, BIG HOPS makes known to the purchasing public what is occurring at each of their locations.

13. Visitors at the BIG HOPS locations can use Facebook to rate their experience at a BIG HOPS restaurant. Due to the hard work of the BIG HOPS employees, BIG HOPS has a rating of 4.7 out 5. BIG HOPS tries very hard to make sure its patrons have a good experience when visiting a BIG HOPS restaurant.

14. To protect its name BIG HOPS, J&J, filed U.S. Trademark Application Serial No. 86/095,951 on October 18, 2013 to register the mark BIG HOPS for “restaurant and bar services.” That application issued on June 3, 2014 as Registration No. 4,543,126, a copy of which is attached hereto as **Exhibit A**.

15. J&J has expended considerable time, resources and effort in developing and promoting the BIG HOPS mark, and as a result, the mark BIG HOPS has developed significant good will for J&J.

16. While all of the locations for BIG HOPS owned by J&J are in the San Antonio metropolitan area, San Antonio has a large tourist business with people coming to San Antonio from all across the United States and from foreign countries. Many of those tourists visit local establishments, including the BIG HOPS restaurants and bars. As a result, the name BIG HOPS as indicating J&J has established, or is establishing, its reputation with others living in other parts of the United States.

17. On information and belief, East End was created on February 9, 2004. Some time thereafter, East End started brewing and selling a beer under the name BIG HOP.

18. Based on information and belief, being a microbrewery, the beers brewed and sold by East End were sold in the greater metropolitan area of Pittsburgh, Pennsylvania.

19. Based on information and belief, the first attempt by East End to protect the mark BIG HOP was when East End filed U.S. Trademark Application Serial No. 86/604,350 on April 21, 2015 for “beers, ales and stout.” Based on information and belief, prior to April 21, 2015, East End had not attempted to protect BIG HOP as a mark.

20. Based on information and belief, Application Serial No. 86/604,350 by East End for the mark BIG HOP for “beers, ales and stout” was rejected by the Examiner in the United States Patent and Trademark Office based upon prior Registration No. 4,543,126 for the mark BIG HOPS issued to J&J for “restaurant and bar services.”

21. After East End’s Application Serial No. 86/604,350 was rejected, East End’s attorney sent an email to Rob Martindale with J&J threatening to cancel J&J’s registration for BIG HOPS (see **Exhibit B**).

22. After Rob Martindale with J&J identified the undersigned attorney as has his IP attorney, a similar email was sent to the undersigned attorney, again threatening to cancel J&J's registration for the mark BIG HOPS (see **Exhibit C**).

23. After the initial emails (Exhibits B & C) that occurred on July 27, 2015, outside counsel William Ryann had a series of communications with the attorneys representing East End. In a communication from East End's attorney dated September 23, 2015 (see **Exhibit D**), East End's attorney alleged the following:

“[O]ur client's product sold under the BIG HOP brand are well known to customers throughout the country.”

“[S]ocial media and online resources further establish the BIG HOP brand's nationwide reputation and renown.”

“[O]ur client's Twitter page (<https://twitter.com/EastEndBrewing>) on which BIG HOP-branded beers are promoted and advertised, has over 11,000 followers across the United States.”

“East End's Instagram page (<https://instagram.com/eastendbrewing/>), which likewise features and promotes the BIG HOP brand, has nearly 3,000 followers from across the country.”

“[A] review of user profiles of raters for its BIG HOP IPA ... and BIG HOP Harvest Ale ... shows that such consumers of our client's BIG HOP products hail from states across the country, including ... even your client's home state of Texas.”

(Emphasis added.)

24. Based upon information and belief, East End does not have the nationwide presence under the BIG HOP mark as alleged by East End's attorney.

25. Further, based upon information and belief, East End does not have the Instagram followers under the BIG HOP mark as alleged by East End's attorney.

26. Based upon information and belief, East End did not have a national reputation in the mark BIG HOP for “beers, ales and stout,” but instead has a local reputation in the Pittsburgh

area for “beers, ales and stout.” After this controversy occurred, East End has attempted to create a national image through social media, such as Twitter and Instagram.

27. The emails received from East End’s attorney (Exhibits B, C, and D) clearly threaten to cancel J&J’s Registration No. 4,543,126 for the mark BIG HOPS for “restaurant and bar services” if J&J does not comply with East End’s demands.

28. Because East End is located in Pittsburgh, Pennsylvania and J&J is located in San Antonio, Texas, there exists no good faith basis for East End to threaten J&J with cancellation of its registration for the mark BIG HOPS. The allegations contained in the emails were asserted wrongfully, unreasonably and in bad faith.

29. East End’s unfounded and bad faith allegations concerning J&J’s registration of the mark BIG HOPS and threats to seek cancellation causes harm to the value, reputation and goodwill associated with the mark BIG HOPS.

30. J&J will sustain significant harm and/or damage if its registration for BIG HOPS is cancelled. Such harm and/or damages include, without limitation, the loss of goodwill associated with the registration of BIG HOPS, and the expenditure of significant time, money, and resources to develop, implement, and acquire goodwill and secondary meaning associated with the mark BIG HOPS.

31. Based upon East End’s allegations and threats contained in the emails, J&J has a reasonable apprehension of litigation. Specifically, J&J has a reasonable apprehension East End will commence either (a) a suit against J&J for trademark infringement and/or unfair competition or (b) a Petition for Cancellation of the registration for BIG HOPS owned by J&J.

32. The dispute between J&J and East End is definite and concrete, real and substantive, and touches upon the legal relations of parties having adverse legal interest. This

substantial controversy is of significant immediacy and reality to warrant the issuance of a declaratory judgement. Accordingly, a case or controversy exists under 28 U.S.C. § 1201.

**COUNT 1**

**DECLARATORY JUDGMENT OF CONCURRENT USE**

33. J&J incorporates by reference the allegations of the preceding paragraphs 1 through 32.

34. Assuming East End proves their use precedes and has been substantially continuous from a time prior to any use by J&J, East End would be entitled to concurrent use for BIG HOP in the greater Pittsburgh, Pennsylvania area, which J&J suggests to be a one-hundred (100) mile radius around Pittsburgh, Pennsylvania.

35. J&J being the prior registrant is entitled to exclusive rights to use the mark BIG HOPS or marks confusingly similar thereto for the entire United States, except for Pittsburgh, Pennsylvania and a radius of one-hundred (100) miles there around.

36. Pursuant to such concurrent rights, the Court should order the following:

(a) East End is entitled to have the United States Patent and Trademark Office issue Application Serial No. 86/604,350 to East End as a concurrent use registration for Pittsburgh, Pennsylvania and for a radius one-hundred (100) miles there around; and

(b) J&J is entitled to have the United States Patent and Trademark Office modify Registration No. 4,543,126 be modified to a concurrent use registration for all areas of the United States, except Pittsburgh, Pennsylvania and a radius of one-hundred (100) miles there around.

**COUNT 2**

**DECLARATORY JUDGEMENT OF NON-INFRINGEMENT**

37. J&J incorporates by reference the allegations of preceding paragraphs 1 through 32.

38. This Count 2 is being asserted as an alternative count and/or allegation.

39. J&J's use of its mark BIG HOPS for "restaurant and bar services" is not likely to cause confusion, cause mistake, or to deceive as to the affiliation, connection, or association of J&J with East End or any other person/entity as to the origin, sponsorship or approval of J&J's services by East End or any other person.

40. Accordingly, J&J is entitled to a declaratory judgment that its use of BIG HOPS for "restaurant and bar services" does not violate § 42 or § 43(a) of the Lanham Act, or constitute unfair competition or trademark infringement under the common law of any state of the United States.

**COUNT 3**

**TRADEMARK INFRINGEMENT**

41. J&J incorporates by reference the allegations of preceding paragraphs 1 through 32. This Count 3 is asserted as an alternative count.

42. J&J has superior rights to the use of the mark BIG HOPS for most (if not all) of the United States for "restaurant and bar services."

43. East End's use of BIG HOP for "beers, ales and stout" has been limited to the area of Pittsburgh, Pennsylvania and a radius of one-hundred (100) miles there around.

44. If East End is offering its "beers, ales and stout" outside of Pittsburgh, Pennsylvania or an area one-hundred (100) miles there around, then such use, if there is a likelihood of confusion as alleged by East End, infringes upon the rights of J&J.



45. Based upon information and belief, the infringement will continue and will result in serious harm to J&J unless enjoined by this Court.

**COUNT 4**

**DECLARATORY JUDGEMENT OF UNFAIR COMPETITION**

46. J&J incorporates by reference the allegations of preceding paragraphs 1 through 32 and paragraphs 41 through 45. This Count 4 is an alternative pleading.

47. East End's use of its mark BIG HOP for "beers, ales and stout" outside of a one-hundred (100) mile radius of Pittsburgh, Pennsylvania is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of East End with J&J, as to the origin, sponsorship, or approval of East End's goods by J&J.

48. Accordingly, J&J is entitled to judgment that the use by East End of BIG HOP for "beers, ales and stout" outside a one-hundred (100) mile radius of Pittsburgh, Pennsylvania violates §§ 32 and 43(a) of the Lanham Act, or constitutes unfair competition or infringement with J&J's rights under the common law of any state of the United States.

49. As a result of East End's acts, J&J has suffered and will continue to suffer damage and irreparable injury, including, but not limited to, loss of goodwill, loss of competitive advantage and pecuniary damages.

50. J&J is entitled to compensatory damages, punitive damages and injunctive relief based upon East End's violations of Texas common law and statutory law concerning unfair competition and trademark infringement.

**PRAYER FOR RELIEF**

Wherefore, premises considered, J & J Martindale Ventures, LLC requests the following relief:

- A. That the Court enter judgment declaring that:
  - 1. J&J has superior rights to use its mark BIG HOPS for “restaurant and bar services” for the entire United States, save and except Pittsburgh, Pennsylvania and a radius one-hundred (100) miles there around, and
  - 2. East End has superior rights to use its mark BIG HOP for Pittsburgh, Pennsylvania and a radius one-hundred (100) miles there around for “beers, ales, and stout;”
- B. That the Court enter a judgment declaring that:
  - 1. J&J is entitled to concurrent use registration for the mark BIG HOPS for “restaurant and bar services” for the United States, save and except Pittsburgh, Pennsylvania and a radius one-hundred (100) miles there around, and
  - 2. East End is entitled to a concurrent use registration for the mark BIG HOP for “beers, ales and stout” for Pittsburgh, Pennsylvania and a radius one-hundred (100) miles there around, but not the remainder of the United States;
- C. That the Court enter a judgment declaring that J&J’s use of the mark BIG HOPS for “restaurant and bar services” outside Pittsburgh, Pennsylvania and a radius one-hundred (100) miles there around does not violate any rights of East End under the Lanham Act, the common law of unfair competition or any other rights of East End;

- D. That the Court enter a judgment enjoining East End, its agents, servants, employees, or attorneys from:
1. Interfering with or threatening to interfere with the use of BIG HOPS for “restaurant and bar services” by J&J or its agents, servants, representatives, licensees, customers, successors or assigns, outside of Pittsburgh, Pennsylvania or a one-hundred (100) mile radius there around and/or
  2. Threatening to institute or instituting any action, including, without limitation, any administrative, U.S. Patent and Trademark Office, or Trial and Appeal Board proceeding or any other district court proceeding placing at issue J&J’s mark BIG HOPS for use in the United States outside of Pittsburgh, Pennsylvania or a radius one-hundred (100) miles there around;
- E. That the Court enter judgment for infringement and/or unfair competition against East End for its use of BIG HOP outside of Pittsburgh, Pennsylvania or a radius one-hundred (100) miles there around;
- F. That the Court award to J&J actual damages and/or Defendant’s profits for any use of the mark BIG HOP outside of Pittsburgh, Pennsylvania and one-hundred (100) miles there around, which use predates June 3, 2014, the date of issuance J&J’s registration for BIG HOPS;
- G. That the Court award to J&J punitive damages;
- H. That the Court award to J&J its attorneys’ fees, costs and expenses incurred in this action; and

- I. That the Court grant J&J such other and further relief as this Court may deem just and proper.

**JURY DEMAND**

In accordance with Fed. R. Civ. P. 38, J&J hereby demands a trial by jury as to all issues so triable in this action.

DATED: October 9, 2015

Respectfully submitted,

/s/ Ted D. Lee

Ted D. Lee

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ATTORNEYS FOR PLAINTIFF,  
J & J MARTINDALE VENTURES, LLC

JS 44 (Rev. 12/12)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

### I. (a) PLAINTIFFS

J & J MARTINDALE VENTURES, LLC, a Texas Limited Liability Company

(b) County of Residence of First Listed Plaintiff BEXAR  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Ted D. Lee, GUNN, LEE & CAVE, P.C., 300 Convent St., Suite 1080,  
San Antonio, Texas 78205

### DEFENDANTS

EAST END BREWING COMPANY, INC.

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Jeanne Hamburg, NORRIS MCLAUGHLIN & MARCUS, P.A., 875  
Third Ave., 8th Floor, New York, New York 10022

### II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

### III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

### IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education <b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

### V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

### VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202  
Brief description of cause:  
Concurrent Use, Trademark Infringement, and/or Unfair Competition

### VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint:  
JURY DEMAND: ☐ Yes ☐ No

### VIII. RELATED CASE(S) IF ANY

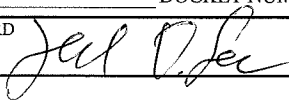
(See instructions):

JUDGE

DOCKET NUMBER

DATE  
10/09/2015

SIGNATURE OF ATTORNEY OF RECORD  
Ted D. Lee



FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

# EXHIBIT A

**United States of America**  
United States Patent and Trademark Office

# Big Hops

**Reg. No. 4,543,126**

**Registered June 3, 2014**

**Int. Cl.: 43**

**SERVICE MARK**

**PRINCIPAL REGISTER**

J & J MARTINDALE VENTURES, LLC (TEXAS LIMITED LIABILITY COMPANY), DBA  
BIG HOPS GROWLER STATION  
1814 EDGEHILL DR  
SAN ANTONIO, TX 78209

FOR: RESTAURANT AND BAR SERVICES, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 3-18-2013; IN COMMERCE 3-18-2013.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 86-095,951, FILED 10-18-2013.

FRED CARL, EXAMINING ATTORNEY



*Michelle K. Lee*

Deputy Director of the United States  
Patent and Trademark Office



# EXHIBIT B

-----Original Message-----

From: JHAMBURG@nmmlaw.com

Sent: Thursday, July 23, 2015 5:37pm

To: [rmartindale2@yahoo.com](mailto:rmartindale2@yahoo.com), [rob@bighopsgrowlerstation.com](mailto:rob@bighopsgrowlerstation.com)

Subject: BIG HOP for beers, ales and stout

Hello Mr. Martindale.

I am an intellectual property attorney. Our client East End Brewing Company has been using BIG HOP for beers, ales and stout since at least 2004. I attach a label in use on my client's products.

Your trademark registration for BIG HOPS, based on use since 2013, and covering restaurant and bar services, was cited against my client's recent U.S. trademark application. As our client has used BIG HOP in commerce prior to your company's use, your company's registration is vulnerable to cancellation should our client bring a petition to cancel it based on its prior rights.

However, rather than challenging your company's registration based on our client's prior rights in BIG HOP, our client would prefer to settle this matter amicably. Our client would be willing to agree not to challenge your company's registration so long as your company does not use or register BIG HOPS (or BIG HOP or a confusingly similar variation of either) for beers, ales and stout (and alcoholic beverages generally). Each party would then consent to the other's use and registration for their respective goods and services.

If this is agreeable to you, we would be happy to prepare a simple coexistence agreement memorializing these terms for both parties' signatures.

This communication does not purport to be an exhaustive statement of our client's position, is not a waiver of any of its rights or remedies, and constitutes an offer of

compromise and is therefore privileged and confidential and inadmissible in any judicial proceeding.

Please respond to this communication no later than one week from today's date so our client may make a timely decision as to how to proceed.

We look forward to hearing from you.

Sincerely,  
Jeanne Hamburg

**Jeanne Hamburg**

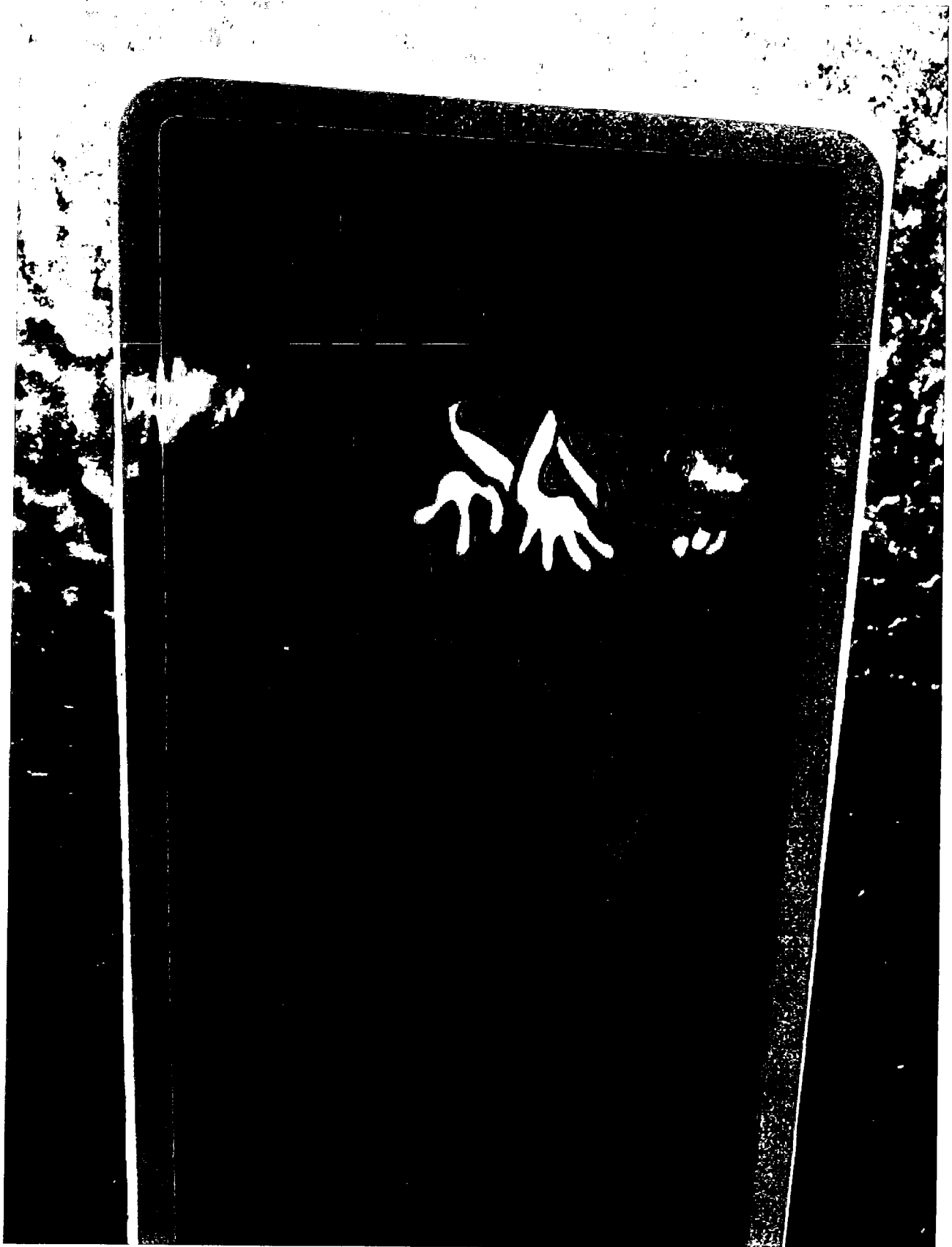
**Norris McLaughlin & Marcus, P.A.**

t: 212.808.0700 | d: 917.369.8894 | f: 212.808.0844 | e: [jhamburg@nmmlaw.com](mailto:jhamburg@nmmlaw.com) |  
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NY Office: 875 Third Ave | 8th Floor | New York, NY 10022  
Bridgewater, NJ | New York, NY | Allentown, PA

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# EXHIBIT C

**Ted D. Lee**

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**From:** JHAMBURG@nmmlaw.com  
**Sent:** Monday, July 27, 2015 11:20 AM  
**To:** Ted D. Lee  
**Subject:** BIG HOP for beers, ales and stout

Dear Mr. Lee:

Further to an email from Mr. Martindale below I understand you represent Big Hops. As set forth in my initial communication before I was aware Big Hops had counsel, I am an intellectual property attorney. Our client East End Brewing Company has been using BIG HOP for beers, ales and stout since at least 2004.

Your client's trademark registration for BIG HOPS, based on use since 2013, and covering restaurant and bar services, was cited against my client's recent U.S. trademark application. As our client has used BIG HOP in commerce prior to your client, its registration is vulnerable to cancellation should our client bring a petition to cancel it based on its prior rights.

However, rather than challenging your client's registration based on our client's prior rights in BIG HOP, our client would prefer to settle this matter amicably. Our client would be willing to agree not to challenge your client's registration so long as your client does not use or register BIG HOPS (or BIG HOP or a confusingly similar variation of either) for beers, ales and stout (and alcoholic beverages generally). Each party would then consent to the other's use and registration for their respective goods and services.

If this is agreeable to you, we would be happy to prepare a simple coexistence agreement memorializing these terms for both parties' signatures.

This communication does not purport to be an exhaustive statement of our client's position, is not a waiver of any of its rights or remedies, and constitutes an offer of compromise and is therefore privileged and confidential and inadmissible in any judicial proceeding.

We look forward to hearing from (and working with) you in an expeditious fashion and more quickly than the 30 day time frame proposed by your client.

On another more personal note we recently concluded a federal court case in Dallas (not the first time I have had the pleasure of litigating in Texas having long ago worked with Baker Botts in its NY office) and are always looking to forge relationships with local counsel from smaller to mid sized firms like yours in different regions of the country. (We are a smaller firm and always look for a good fit in local counsel.) For that reason as well we look forward to working with you.

Sincerely,

Jeanne Hamburg

# EXHIBIT D



**From:** ABhatt@nmmlaw.com [mailto:ABhatt@nmmlaw.com]  
**Sent:** Wednesday, September 23, 2015 10:31 AM  
**To:** William <wfr@corridor-ip.com>  
**Cc:** JHAMBURG@nmmlaw.com  
**Subject:** East End (Big Hop)/Big Hops (Our Ref: 116960.3)

Dear William,

I have spoken to my client following our earlier call. Pursuant to your client's request, I attach a sampling of invoices demonstrating East End's use in commerce of the BIG HOP mark from as early as December 1, 2004. In addition, my client has provided a sampling of sales reports summarizing sales activities for products sold under the BIG HOP mark from as early as 2005, and through as recent as 2014. As is evident from the enclosed invoices and sales reports, East End has consistently used the BIG HOP designation since at least late 2004, well before your client's adoption of the designation BIG HOPS.

In addition, our client's products sold under the BIG HOP brand are well known to consumers throughout the country. Indeed, as a result of this nationwide reputation, consumers from across the country regularly visit our client's facility in Pennsylvania to take a tour of its brewery, which tour East End started offering in 2005, and enjoy its products including its BIG HOP beers. In addition, social media and online resources further establish the BIG HOP brand's nationwide reputation and renown. As an example, our client's Twitter page (<https://twitter.com/EastEndBrewing>), on which BIG HOP-branded beers are promoted and advertised, has over 11,000 followers from across the United States. In addition, East End's Instagram page (<https://instagram.com/eastendbrewing/>), which likewise features and promotes the BIG HOP brand, has nearly 3,000 followers from across the country. Moreover, websites such as BeerAdvocate.com, a leading online site for rating beers, demonstrate the strong brand recognition and reputation of East End's BIG HOP beverages with consumers nationwide. The Beer Advocate website contains reviews for East End's BIG HOP beers from as early as December 2004. Further, a review of the user profiles of raters for its BIG HOP IPA (<http://www.beeradvocate.com/beer/profile/10485/20952/>) and BIG HOP Harvest Ale (<http://www.beeradvocate.com/beer/profile/10485/25924/>) shows that such consumers of our client's BIG HOP products hail from states across the country, including Maine, Indiana, Iowa, Alaska, California, New York, Ohio, Colorado and even your client's home state of Texas. A sampling of screen shots of reviews for the BIG HOP brand IPA, which includes the reviewer's profile details (and home state), is also enclosed.

Based on the foregoing, there can be no doubt that East End Brewing would be able to establish its prior rights in its BIG HOP mark, substantiate that such use has been continuous and without interruption, and demonstrate that its BIG HOP brand had achieved nationwide recognition, well before your client began use of its BIG HOPS mark. Despite the strength of our client's position, our client remains willing to agree not to challenge your client's registration for BIG HOPS and instead enter into a co-exist agreement based on our previously discussed terms. This would include your client's agreement not to use or seek registration of BIG HOPS in connection with alcoholic beverages anywhere in the United States. We reiterate our hope that the parties are able to amicably resolve this matter, and without the need to resort to litigation.

This email and its contents are for settlement purposes only and does not purport to be an exhaustive statement of our client's position. Nothing contained in this email should be viewed as a waiver of rights or an admission on the part of our

client.

We look forward to hearing from you.

Sincerely,  
Ami

**Ami Bhatt, Esq.**

**Norris McLaughlin & Marcus, P.A.**

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