

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

MOOSEHEAD BREWERIES LIMITED, )  
89 Main Street W ) **JUDGE:** GTS  
Saint John, New Brunswick, Canada E2M 3N2 )  
 ) **MAGISTRATE JUDGE:** RFT  
Plaintiff, )  
 ) **CASE NO:** 1:15-cv-260  
v. )  
 )  
ADIRONDACK PUB & BREWERY, INC. )  
33 Canada Street ) **COMPLAINT FOR TRADEMARK**  
Lake George, NY 12845 ) **INFRINGEMENT AND FALSE**  
 ) **DESIGNATION OF ORIGIN**  
Defendant. )  
 ) **JURY TRIAL DEMANDED**  
 )

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Plaintiff Moosehead Breweries Limited (“Moosehead”), for its complaint against Defendant Adirondack Pub & Brewery, Inc., alleges as follows:

**JURISDICTION, PARTIES AND VENUE**

1. This is an action for trademark infringement and unfair competition under various provisions of the Lanham Act, 15 U.S.C. §§ 1051 et seq., and for state common law trademark infringement. This Court has subject matter jurisdiction over the federal claims in this action pursuant to 28 U.S.C. §§ 1331 and 1338 and over the state claims pursuant to 28 U.S.C. § 1367.

2. Moosehead is a corporation organized under the laws of Canada, having its principal office and place of business at 89 Main Street W.; P.O. Box 3100; Saint John, N.B. Canada E2M 3N2.

3. On information and belief, Defendant is a New York corporation with a principal place of business at 33 Canada Street, Lake George, NY 12845.

4. This Court has personal jurisdiction over Defendant. Venue is proper in this judicial district under 28 U.S.C. § 1391(b), as a substantial part of the events giving rise to Moosehead's claims has occurred in this district.

### **BACKGROUND FACTS**

#### **Moosehead and its Use of the Moosehead Trademarks**

5. Moosehead brews beer sold and distributed throughout the world under its MOOSE family of trademarks, which includes the word marks MOOSE and MOOSEHEAD, as well as the MOOSEHEAD design marks displaying the head and antlers of a moose.

Moosehead's business, among other things, includes the manufacture, sale, and distribution of a variety of beers, and the sale of related consumer products such as drinking glasses, mugs, cups, clothing, hats, posters, bumper stickers, and decals promoting the MOOSEHEAD name and MOOSE family of marks in connection with its brand of beers.

6. Moosehead owns the right, title and interest in and to several federally registered trademarks for the MOOSE family of marks.

7. Moosehead has used The MOOSEHEAD mark since at least 1931 in connection with ale, beer, stout, porter and lager. Moosehead has since created a MOOSE family of marks in the United States which have been in use since at least the late 1970's in connection with a variety of beers, and also in connection with consumer products and other events including, but not limited to, drinking glasses, mugs, plastic cups, clothing, hats, posters, bumper stickers, windshield stickers made of paper, playing cards, decals, serving trays, and pens. Moosehead's

MOOSE family of marks include marks which include the term “MOOSE” and/or the likeness of the head of a moose.

8. Moosehead’s products covered by its MOOSE family of trademarks include a variety of beers. Moosehead’s products covered by its MOOSE family of trademarks are sold in bars, brew pubs, restaurants, beverage stores and similar establishments. Moosehead’s products are sold in beer bottles, among other containers, and can be purchased in six-packs.

9. Moosehead has spent and continues to spend large sums of money in the promotion, advertisement and sale of its goods bearing its MOOSE family of trademarks, and by reason of such advertising and the high quality of its products carrying such trademarks, Moosehead enjoys a valuable goodwill and an enviable reputation with respect to its trademarks and the goods associated therewith.

**Defendant and its Unauthorized Use of the MOOSEHEAD Family of Trademarks**

10. Defendant produces beer, and also produces at least one root beer product under the MOOSE WIZZ brand.

11. According to an application for trademark registration filed with the United States Patent and Trademark Office, Defendant began using the MOOSE WIZZ brand to sell its root beer by December 31, 2008, several decades after Moosehead began using the MOOSEHEAD mark. Defendant abandoned that trademark application in response to Moosehead’s opposition based on Moosehead’s prior use of the MOOSE family of trademarks.

12. Defendant’s MOOSE WIZZ root beer is offered through the same channels of trade, substantially the same channels of trade, and/or channels of trade that are related to those through which some or all of Moosehead’s products covered by its MOOSE family of trademarks are offered.

13. Defendant's MOOSE WIZZ root beer is offered to the same classes of purchasers, substantially the same classes of purchasers, and/or classes of purchasers that are related to those to whom some or all of Moosehead's products covered by its MOOSE family of trademarks are offered.

14. Defendant's MOOSE WIZZ root beer is or may be advertised, marketed and promoted through the same media channels as some or all of the products of Moosehead covered by its MOOSE family of trademarks.

15. Defendant's logo, "MOOSE WIZZ," is highly similar to Moosehead's MOOSE family of registered trademarks, including U.S. Reg. Nos. 1,217,629 (MOOSEHEAD), 1,511,184 (MOOSEHEAD), 1,598,511 (MOOSEHEAD) and 2,100,821 (MOOSE) (collectively, the "MOOSEHEAD Word Marks").

16. In addition to using a logo that is highly similar to Moosehead's MOOSE family of registered trademarks, Defendant's MOOSE WIZZ root beer is sold in bottles that contain labels that are highly similar to the labels used with several of Moosehead's beer products, depicting the head of a moose annexed to the MOOSE WIZZ logo. As shown below, these labels are highly similar to both the labels long-used on Moosehead's beer bottles and other containers, as well as at least the following Moosehead registered trademarks depicting the head of a moose: 1,527,256, 1,217,629 and 3,253,186 (collectively, the "MOOSEHEAD Head of Moose Marks").

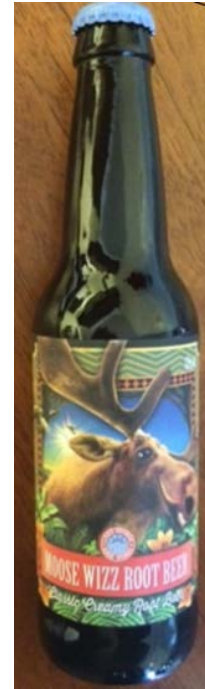
**Moosehead Bottle**



**Moosehead Head Of Moose Marks**



**Defendant's Bottle**



(The MOOSEHEAD Word Marks and the MOOSEHEAD Head of Moose Marks are collectively referred to as the “Moosehead Registered Marks,” and copies of their certificates of registration are attached as Exhibits 1 – 7.)

17. Although Defendant abandoned its application to federally register its MOOSE WIZZ mark in view of Moosehead’s opposition, it has not stopped using that mark in commerce, nor has it stopped using in commerce the combination of that mark and the head of a moose on the labels of its root beer products as shown above, despite Moosehead’s demands that it cease doing so.

18. Defendant’s MOOSE WIZZ root beer products are so similar to Moosehead’s beer sold under the Moosehead Registered Marks as to create a likelihood of confusion. Both products are sold in establishments such as bars, brew pubs, restaurants, and beverage stores;

beer bottles and root beer bottles use and emphasize the term “beer;” Moosehead’s and Defendant’s bottles are highly similar; and both can be purchased in six-packs.

19. As a result of the foregoing, members of the purchasing public familiar with Moosehead’s products and Moosehead’s MOOSEHEAD trademarks are likely to be confused, misled, or deceived into thinking that the products of Defendant are products of Moosehead or are in some way sponsored by or connected with Moosehead, to Moosehead’s irreparable damage and injury.

20. Moosehead will be injured if Defendant is able to continue selling its root beer under the “MOOSE WIZZ” brand and in highly similar packaging to that in which Moosehead’s products are sold, and as such separately and together falsely suggest a connection with Moosehead and Moosehead’s products bearing the marks in the Moosehead Registered Marks. Moosehead has no control over the nature and quality of the products offered by Defendant under the “MOOSE WIZZ” trademark, and thus will be damaged and irreparably harmed by reason of the loss of control over its reputation and the erosion of its goodwill in the Moosehead Registered Marks.

**COUNT I – TRADEMARK INFRINGEMENT  
UNDER 15 U.S.C. § 1114**

21. Moosehead realleges and incorporates by reference Paragraphs 1-20 of this Complaint as if fully set forth herein.

22. Defendant has used in commerce, without Moosehead’s consent, reproductions, counterfeits, copies or colorable imitations of Moosehead’s registered Moosehead Registered Marks in connection with the sale, offer for sale, distribution and/or advertising of food products, such use being likely to cause confusion, to cause mistakes, or to deceive.

23. The actions of Defendant described in this Count constitute trademark infringement in violation of 15 U.S.C. § 1114. Defendant's actions have caused, and, unless enjoined by this Court, will continue to cause serious and irreparable injury to Moosehead for which Moosehead has no adequate remedy at law.

24. The actions of Defendant described in this Count have also caused damage to Moosehead for which Moosehead should be compensated by Defendant.

**COUNT II – FALSE DESIGNATIONS  
OF ORIGIN UNDER 15 U.S.C. § 1125(a)**

25. Moosehead realleges and incorporates by reference Paragraphs 1-20 of this Complaint as if fully set forth herein.

26. Defendant has, without Moosehead's consent, on or in connection with products, used in commerce a word, term, name, symbol, device, or any combination thereof which is likely to cause confusion, to cause mistake, or to deceive as to the affiliation, connection and/or association of Defendant with Moosehead and its products bearing the registered Moosehead Registered Marks, and/or as to the origin, sponsorship, and/or approval by Moosehead of Defendant's unauthorized goods.

27. The actions of Defendant described in this Count constitute false designations of origin in violation of 15 U.S.C. § 1125(a). Defendant's acts have caused and, unless enjoined by this Court, will continue to cause serious and irreparable injury to Moosehead for which Moosehead has no adequate remedy at law.

28. The acts of Defendant described in this Count have also caused damage to Moosehead for which Moosehead should be compensated by Defendant.

**COUNT III – TRADEMARK DILUTION**  
**UNDER 15 U.S.C. § 1125(c)**

29. Moosehead realleges and incorporates by reference Paragraphs 1-20 of this Complaint as if fully set forth herein.

30. Moosehead has extensively and continuously promoted and used the Moosehead Registered Marks both in the United States and throughout the world, and the marks have thereby become famous and well-known symbols of Moosehead's goods and services.

31. As a result of at least eighty-four (84) years of continuous and substantial use, as well as significant amounts of advertising and sales, Moosehead's Moosehead Registered Marks are famous trademarks within the meaning of § 43(c) of the Lanham Act, and such marks became famous before Defendant's use of its MOOSE WIZZ brand.

32. Defendant is making commercial use in commerce of marks that dilute and are likely to dilute the distinctiveness of the Moosehead Registered Marks by eroding the public's exclusive identification of these famous marks with Moosehead, tarnishing and degrading the positive associations and prestigious connotations of the marks, and otherwise lessening the capacity of the marks to identify and distinguish goods and services.

33. Defendant has caused and will continue to cause irreparable injury to Moosehead's goodwill and business reputation, and dilution of the distinctiveness and value of Moosehead's famous and distinctive the Moosehead Registered Marks in violation of 15 U.S.C. § 1125(c).

**COUNT IV – COMMON LAW**  
**TRADEMARK INFRINGEMENT**

34. Moosehead realleges and incorporates by reference Paragraphs 1-20 of this Complaint as if fully set forth herein.



35. Defendant's actions complained of herein constitute trademark infringement under common law, for which Moosehead is entitled to relief.

WHEREFORE, Plaintiff Moosehead prays:

a) that Defendant be found to have infringed Moosehead's rights in the Moosehead Registered Marks and that Defendant be found liable on each of the causes of action enumerated in this Complaint;

b) that Defendant, its officers, directors, employees, agents and affiliated entities, and all persons in active participation or concert with Defendant, be preliminarily and permanently enjoined from infringing the Moosehead Registered Marks, and from engaging in false designation of origin in any other manner;

c) that Defendant, its officers, directors, employees, agents and affiliated entities, and all persons in active participation or concert with Defendant, be preliminarily and permanently enjoined from using any trademark, trade dress, service mark, name, logo, design or source designation of any kind on or in connection with Defendant's goods or services that dilutes or is likely to dilute the distinctiveness of the Moosehead Registered Marks;

d) that Defendant be required to deliver up and/or to destroy any and all products infringing the Moosehead Registered Marks in its possession, as well as all labels, literature, and advertisements bearing the marks, together with any means for producing same;

e) that Defendant be ordered to provide an accounting of all profits derived from its sales of goods in connection with the acts complained of herein, and to pay such profits, or such greater sum as this Court deems just and proper, to Moosehead;

f) that Defendant be ordered to pay damages to Moosehead adequate to compensate Moosehead for the acts described in this Complaint, or, upon Moosehead's election,

statutory damages, that such damages be trebled, and that Defendant be ordered to pay  
Moosehead its reasonable attorneys' fees; and

g) that Moosehead have such other and further relief as this Court may deem  
just and proper.

Respectfully submitted,

*/s/ S. David Devaprasad*

S. David Devaprasad

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**JURY DEMAND**

Plaintiff Moosehead demands a trial by jury.

*/s/ S. David Devaprasad*

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S. David Devaprasad

*Attorney for Plaintiff,  
Moosehead, Inc.*

# EXHIBIT 1

Int. Cl.: 25

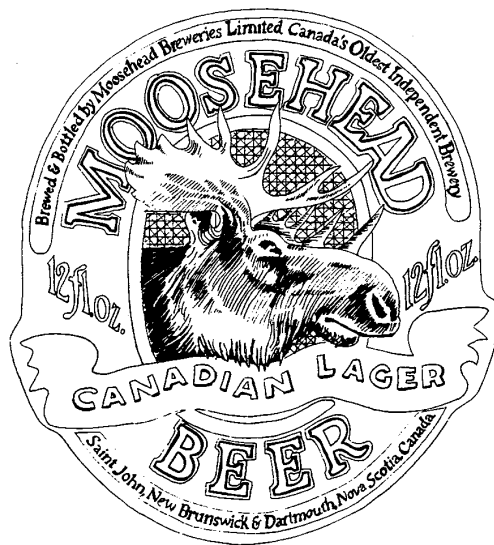
Prior U.S. Cl.: 39

Reg. No. 1,217,629

Registered Nov. 23, 1982

**United States Patent and Trademark Office**

**TRADEMARK**  
Principal Register



Moosehead Breweries Limited (Canada corporation)  
St. John, New Brunswick, Canada

Ser. No. 252,552, filed Mar. 3, 1980.

For: SHIRTS, in CLASS 25 (U.S. Cl. 39).  
First use Jul. 31, 1979; in commerce Aug. 21, 1979.  
Owner of U.S. Reg. No. 319,946.

MICHAEL J. HYNAK, Examining Attorney

# EXHIBIT 2

**Int. Cl.: 32**

**Prior U.S. Cl.: 48**

**United States Patent and Trademark Office** **Reg. No. 1,511,184**  
**Registered Nov. 1, 1988**

**TRADEMARK  
PRINCIPAL REGISTER**

**MOOSEHEAD**

MOOSEHEAD BREWERIES LIMITED  
(CANADA CORPORATION)  
P.O. BOX 3100  
STATION B  
SAINT JOHN, NEW BRUNSWICK, CANADA  
E2M 3H2

FIRST USE 5-1-1929; IN COMMERCE  
5-1-1929.  
OWNER OF U.S. REG. NOS. 319,946, 1,217,629  
AND OTHERS.

SER. NO. 714,514, FILED 3-3-1988.

FOR: BEER, IN CLASS 32 (U.S. CL. 48).

JULIE B. SEYLER, EXAMINING ATTORNEY

# EXHIBIT 3



**Int. Cls.: 16, 18, 21 and 25**

**Prior U.S. Cls.: 2, 3, 13, 33, 38, 39 and 50**

**Reg. No. 1,598,511**

**United States Patent and Trademark Office** Registered May 29, 1990

**TRADEMARK  
PRINCIPAL REGISTER**

**MOOSEHEAD**

MOOSEHEAD BREWERIES LIMITED  
(CANADA CORPORATION)  
P.O. BOX 3100, STATION B  
SAINT JOHN, NEW BRUNSWICK, CANADA  
E2M 3H2

FOR: BANNERS, BAR SIGNS AND CRESTS  
MADE OF PAPER, IN CLASS 16 (U.S. CLS. 38  
AND 50).

FOR: TOTE BAGS, IN CLASS 18 (U.S. CL. 3).

FOR: DRINKING GLASSES, MUGS, SERV-  
ING TRAYS, PLASTIC CUPS, INSULATED  
BEVERAGE HOLDERS, AND PORTABLES IN-  
SULATED CONTAINERS FOR FOOD AND  
BEVERAGE, IN CLASS 21 (U.S. CLS. 2, 13 AND  
33).

FOR: CLOTHING, NAMELY SWEATERS,  
FOOTBALL JERSEYS, MESH BALL CAPS,  
WINTER BALL CAPS, PAINTER HATS,  
APRONS, GOLF SHIRTS, SPORTS SHIRTS, T-  
SHIRTS, LONG JOHN SHIRTS, 3/4 BALL  
SHIRTS, HOCKEY SWEATERS, COWBOY  
HATS, IN CLASS 25 (U.S. CL. 39).

PRIORITY CLAIMED UNDER SEC. 44(D) ON  
CANADA APPLICATION NO. 611198, FILED  
7-14-1988, REG. NO. 357860, DATED 6-30-1989,  
EXPIRES 6-30-2004.

OWNER OF U.S. REG. NOS. 1,198,187, 1,217,629  
AND OTHERS.

SER. NO. 73-758,597, FILED 10-19-1988.

JANICE O'LEAR, EXAMINING ATTORNEY

# EXHIBIT 4

Int. Cl.: 32

Prior U.S. Cls.: 45, 46 and 48

Reg. No. 2,100,821

**United States Patent and Trademark Office**

Registered Sep. 30, 1997

**TRADEMARK  
PRINCIPAL REGISTER**

**MOOSE**

MOOSEHEAD BREWERIES LIMITED  
(CANADA CORPORATION)  
89 MAIN STREET WEST  
SAINT JOHN, NEW BRUNSWICK, CANADA  
E2M 3H2

FOR: BREWED ALCOHOLIC BEVERAGES,  
NAMELY, BEER, ALE, STOUT AND LAGER,  
IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

OWNER OF CANADA REG. NO. TMA285467,  
DATED 12-2-1983, EXPIRES 12-2-1998.

OWNER OF U.S. REG. NOS. 1,527,256, 1,568,703  
AND OTHERS.

SER. NO. 75-043,269, FILED 1-16-1996.

SAMUEL E. SHARPER JR., EXAMINING AT-  
TORNEY

# EXHIBIT 5

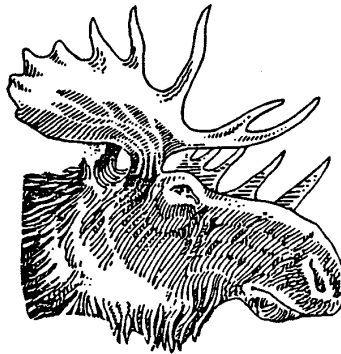
Int. Cl.: 32

Prior U.S. Cl.: 48

Reg. No. 1,527,256

**United States Patent and Trademark Office** Registered Feb. 28, 1989

**TRADEMARK  
PRINCIPAL REGISTER**



MOOSEHEAD BREWERIES LIMITED  
(CANADA CORPORATION)  
P.O. BOX 3100  
STATION B  
SAINT JOHN, NEW BRUNSWICK, CANADA  
E2M 3H2

OWNER OF U.S. REG. NOS. 319,946, 1,198,187,  
AND 1,209,945.

THE LINING IN THE MARK ON THE  
DRAWING IS FOR SHADING PURPOSES  
ONLY AND IS NOT INTENDED TO INDICATE  
COLOR.

FOR: BEER, IN CLASS 32 (U.S. CL. 48).

SER. NO. 719,662, FILED 3-30-1988.

FIRST USE 4-22-1978; IN COMMERCE  
4-22-1978.

HOPE HAMMILL REH, EXAMINING ATTOR-  
NEY

# EXHIBIT 6

Int. Cl.: 25

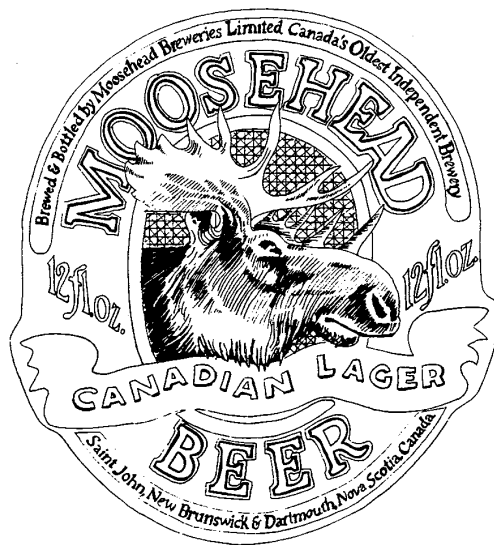
Prior U.S. Cl.: 39

Reg. No. 1,217,629

Registered Nov. 23, 1982

**United States Patent and Trademark Office**

**TRADEMARK**  
Principal Register



Moosehead Breweries Limited (Canada corporation)  
St. John, New Brunswick, Canada

Ser. No. 252,552, filed Mar. 3, 1980.

For: SHIRTS, in CLASS 25 (U.S. Cl. 39).  
First use Jul. 31, 1979; in commerce Aug. 21, 1979.  
Owner of U.S. Reg. No. 319,946.

MICHAEL J. HYNAK, Examining Attorney

# EXHIBIT 7



**Int. Cls.: 25 and 32**

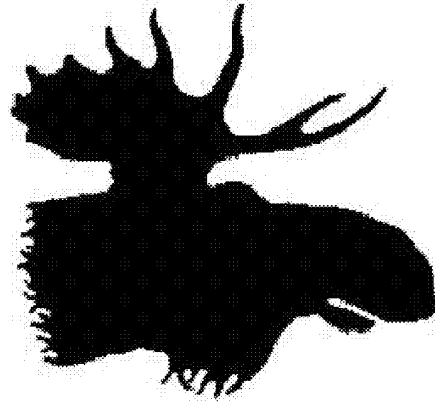
**Prior U.S. Cls.: 22, 39, 45, 46 and 48**

**United States Patent and Trademark Office**

**Reg. No. 3,253,186**

Registered June 19, 2007

**TRADEMARK  
PRINCIPAL REGISTER**



MOOSEHEAD BREWERIES LIMITED (CANADA CORPORATION)  
89 MAIN STREET W., P.O. BOX 3100  
SAINT JOHN, NEW BRUNSWICK, CANADA E2M 3H2

FOR: CLOTHING, NAMELY, T-SHIRTS, BASEBALL HATS, VESTS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 5-18-2005; IN COMMERCE 5-18-2005.

FOR: BREWED ALCOHOLIC BEVERAGES, NAMELY, BEER AND ALE, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 5-18-2005; IN COMMERCE 5-18-2005.

PRIORITY CLAIMED UNDER SEC. 44(D) ON CANADA APPLICATION NO. 1267252, FILED 7-29-2005, REG. NO. TMA667312, DATED 7-11-2006, EXPIRES 7-11-2021.

THE MARK CONSISTS OF THE HEAD OF A MOOSE.

SER. NO. 78-790,440, FILED 1-12-2006.

BARBARA BROWN, EXAMINING ATTORNEY