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11

12 **UNITED STATES DISTRICT COURT**  
13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
14 **WESTERN DIVISION – LOS ANGELES**

15  
16 PATAGONIA, INC. and  
PATAGONIA PROVISIONS, INC.,

17 Plaintiffs,

18 v.

19 ANHEUSER-BUSCH, LLC dba  
20 PATAGONIA BREWING CO. ,

21 Defendant.  
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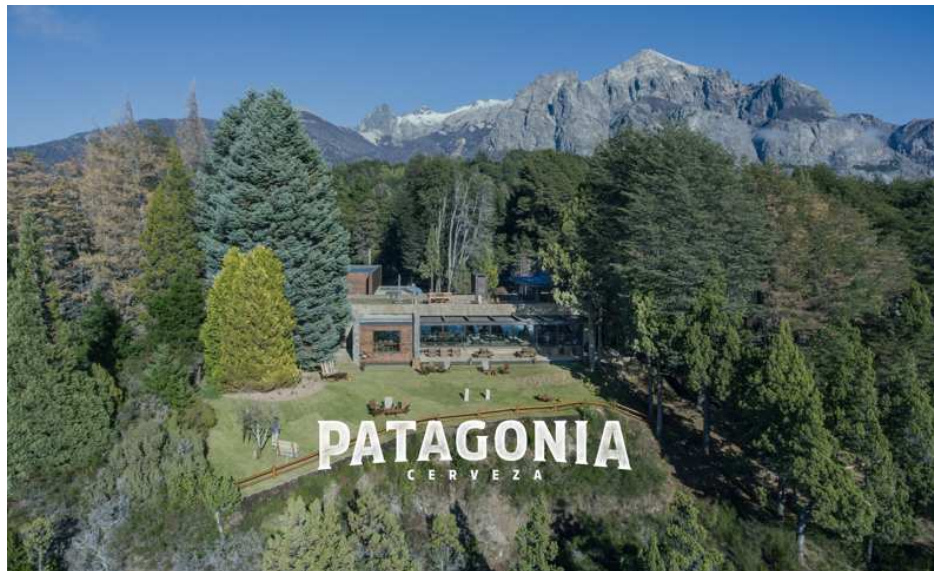
Case No. 2:19-cv-02702-VAP (JEMx)  
**DEFENDANT ANHEUSER-BUSCH,  
LLC’S ANSWER TO PLAINTIFFS’  
SECOND AMENDED COMPLAINT  
FOR TRADEMARK  
INFRINGEMENT, UNFAIR  
COMPETITION, DILUTION,  
FRAUD, AND JUDICIAL  
DECLARATION THAT  
TRADEMARK REGISTRATION IS  
VOID AND COUNTERCLAIMS  
FOR DECLARATORY JUDGMENT  
DEMAND FOR JURY TRIAL**

1 Pursuant to Federal Rule of Civil Procedure 8(b), Defendant Anheuser-Busch,  
2 LLC (“AB” or “Defendant”) hereby answers the Second Amended Complaint  
3 (“Complaint”) [Dkt. 31] of Plaintiffs Patagonia, Inc. and Patagonia Provisions, Inc.  
4 (“Plaintiffs”).

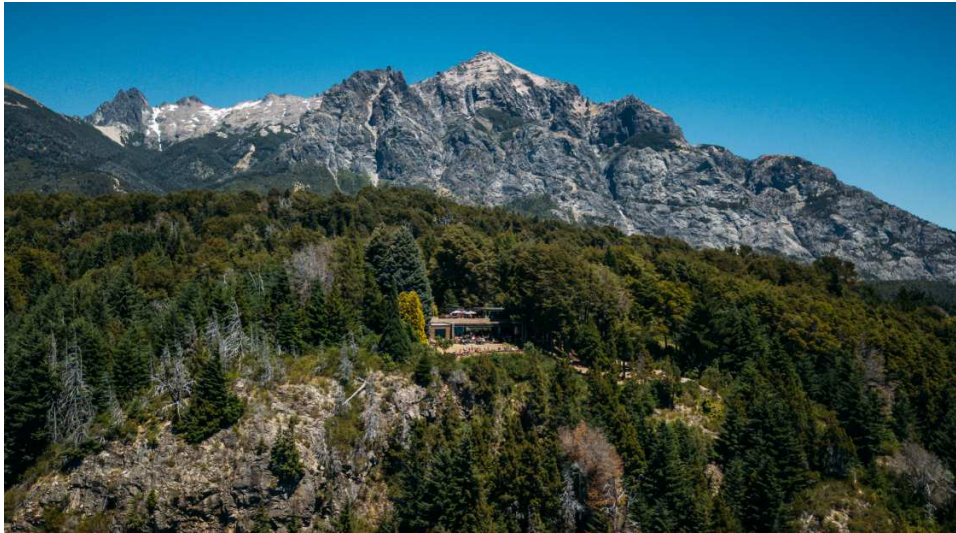
## 5 INTRODUCTION

6 At the southern tip of the Earth lies Patagonia—a mystical region of the world  
7 that is famous for its dramatic mountains, dating back tens of millions of years, and  
8 stunning landscapes. Shared by Argentina and Chile, the Patagonia region has inspired  
9 adventurers for centuries, and numerous companies have named themselves or branded  
10 their products with the Patagonia name.

11 One such product is AB’s PATAGONIA beer. Since 2012, AB has owned the  
12 PATAGONIA® trademark for beer in the United States. But the PATAGONIA brand  
13 has been part of the AB family’s portfolio for much longer, with popular PATAGONIA  
14 beer enjoyed in South America, and an Argentine brewery settled in the midst of  
15 breathtaking mountains and luscious greenery. So inspiring is the scene in that region  
16 that it served as the inspiration for the PATAGONIA logo born in South America, and  
17 adopted by AB in the United States.



27 *Photo of the brewery in San Carlos de Bariloche, a town in Argentina’s*  
28 *Patagonia region, which borders a glacial lake surrounded by the Andes*  
*Mountains. See also <http://www.cervezapatagonia.com.ar/cerveceria>.*



*Side-by-side photos of the Andes Mountains shown behind the brewery that inspired the PATAGONIA logo and AB’s PATAGONIA beer.*

The progenitor of AB’s PATAGONIA beer is the PATAGONIA beer produced in South America by Cervecería y Maltería Quilmes (“Quilmes”), originally founded as Brasserie et Cervecerie Quilmes in 1880, a company that became part of the AB family in 2008. Initially importing PATAGONIA beer from its Argentinian family – which has for years marketed and sold the popular PATAGONIA beer in South America – AB decided in 2018 to manufacture PATAGONIA beer in California, reducing its carbon footprint while maintaining its connection to the region with the same recipe, branding, and hops from Patagonia.

Despite the clear connection between AB’s PATAGONIA beer and the Patagonia region, the origination of the brand in South America, AB’s trademark rights, and Plaintiffs’ longstanding recognition of AB’s rights to beer, Plaintiffs have now apparently decided that they want to enter the beer market with a PATAGONIA-branded beer and realize that AB and its rights stand in their way.

For many years, Plaintiffs have known and acknowledged that AB has the exclusive right to use PATAGONIA in connection with beer in the United States. Indeed, the trademark application resulting in AB’s registration dates back to 2006.

1 Plaintiffs could have objected, but never did. Plaintiffs have even admitted that it would  
2 be unlawful for them to use PATAGONIA on beer, and when Plaintiffs decided to  
3 release beers in partnership with certain breweries, they did so using a different brand  
4 name and without using the “Patagonia” brand on packaging.

5 But now, hoping to cash in on the beer industry, and despite sitting on their hands  
6 for more than a decade, Plaintiffs first objected to AB’s registration and use of  
7 PATAGONIA on April 9, 2019, the day they filed this lawsuit and the *same day* they  
8 filed trademark applications for PATAGONIA on beer. This lawsuit is not about  
9 Plaintiffs trying to protect their goodwill or prevent confusion in the marketplace.  
10 Instead, it is about Plaintiffs wanting something that AB owns – the right to use  
11 PATAGONIA on beer. Through this lawsuit, Plaintiffs not only want to take AB’s  
12 registration for themselves, but they also seek a monopoly over the Patagonia name that  
13 would preclude all others from using the name on any goods or services, despite the fact  
14 that Plaintiffs borrowed the name of a famous, awe-inspiring region of the world, which  
15 no one can own.

16 **PRELIMINARY STATEMENT BY DEFENDANT IN RESPONSE TO THE**  
17 **COMPLAINT’S ALLEGATIONS**

18 Defendant denies all allegations in the Complaint unless expressly admitted. Any  
19 admission herein is limited to the express language of the response and shall not be  
20 deemed an implied admission of additional facts. To the extent paragraphs in the  
21 Complaint are grouped under headings, Defendant has for the Court’s convenience  
22 reproduced such headings herein, but denies each and every allegation made or implied  
23 by such headings. To the extent images in the Complaint are accompanied by captions,  
24 Defendant denies each and every allegation made or implied by such captions.

25 **ALLEGATIONS IN THE COMPLAINT’S INTRODUCTION**

- 26 1. AB denies the allegations in Paragraph 1 of the Complaint.  
27 2. AB admits that the current label on its Patagonia Cerveza beer includes  
28 AB’s PATAGONIA mark with a graphical depiction inspired by the mountains

1 surrounding the Argentine brewery, as shown above. Except as expressly admitted, AB  
2 otherwise denies the allegations in Paragraph 2 of the Complaint.

3 3. AB denies the allegations in Paragraph 3 of the Complaint.

4 4. AB denies the allegations in the first sentence of Paragraph 4 of the  
5 Complaint. AB lacks sufficient knowledge to admit or deny the allegations in the  
6 second and third sentences of Paragraph 4 of the Complaint, and on that basis denies  
7 such allegations.

8 5. AB denies the allegations in Paragraph 5 of the Complaint.

9 **ALLEGATIONS REGARDING PARTIES, JURISDICTION, AND VENUE**

10 6. AB lacks sufficient knowledge to admit or deny the allegations in the first  
11 and second sentences of Paragraph 6 of the Complaint, and on that basis denies such  
12 allegations. AB denies the allegations in the third sentence of Paragraph 6 of the  
13 Complaint.

14 7. AB lacks sufficient knowledge to admit or deny the allegations in  
15 Paragraph 7 of the Complaint, and on that basis denies such allegations.

16 8. AB denies the allegations in the first sentence of Paragraph 8 of the  
17 Complaint. AB lacks sufficient knowledge to admit or deny the allegations in the  
18 second sentence of Paragraph 8 of the Complaint, and on that basis denies such  
19 allegations.

20 9. AB lacks sufficient knowledge to admit or deny the allegations in  
21 Paragraph 9 of the Complaint, and on that basis denies such allegations.

22 10. AB lacks sufficient knowledge to admit or deny the allegations in  
23 Paragraph 10 of the Complaint, and on that basis denies such allegations.

24 11. AB admits that its principal place of business is One Busch Place, St.  
25 Louis, Missouri, 63118. AB admits that it produces beer and owns numerous  
26 trademarks for beer, including PATAGONIA. AB admits that it employs one dedicated  
27 in-house intellectual property attorney that handles its trademarks and retains outside  
28 counsel to assist in procurement, maintenance, and enforcement of its trademarks. AB

1 and its parent company, Anheuser-Busch InBev SA/NV, also own trademarks for other  
2 product categories, and for some of those trademarks, the coverage includes certain  
3 apparel products and certain educational services. Except as expressly admitted, AB  
4 denies the remaining allegations in Paragraph 11 of the Complaint.

5 12. AB denies the allegations in the first sentence of Paragraph 12 of the  
6 Complaint, except admits that Patagonia Brewing Co. was registered by AB as a trade  
7 name / fictitious business name in Missouri and Colorado in or around July 2018. AB  
8 denies the allegations in the second sentence of Paragraph 12 of the Complaint.

9 13. AB admits the allegations in the first and second sentence of Paragraph 13  
10 of the Complaint. AB admits that the Court has supplemental jurisdiction over  
11 Plaintiffs' state law claims but otherwise denies the allegations in the third sentence of  
12 Paragraph 14.

13 14. AB denies the allegations in Paragraph 14 of the Complaint, except admits  
14 that, for the purposes of this matter, it has not objected based on lack of personal  
15 jurisdiction.

16 15. AB denies the allegations in Paragraph 15 of the Complaint, except admits  
17 that it has not objected to venue.

18 **Allegations That AB Unlawfully Obtained**  
19 **the PATAGONIA Registration For Beer**

20 16. AB denies the allegations in the first sentence of Paragraph 16 of the  
21 Complaint, except admits that it owns U.S. Trademark Registration No. 4,226,102. AB  
22 lacks sufficient knowledge to admit or deny the allegations in the second sentence of  
23 Paragraph 16 of the Complaint, and on that basis denies such allegations, except AB  
24 admits that the registration issued from an intent-to-use application filed by Warsteiner  
25 Importers Agency, Inc. ("Warsteiner"). AB denies the allegations in the third sentence  
26 of Paragraph 16 of the Complaint.

27 17. AB denies the allegations in Paragraph 17 of the Complaint.

28 18. AB denies the allegations in Paragraph 18 of the Complaint, except admits

1 that, on June 8, 2006, Warsteiner filed an intent-to-use application for PATAGONIA  
2 on beer, stating that it had a bona fide intent to use or use through a related company or  
3 licensee the mark in commerce.

4 19. AB admits the allegations in Paragraph 19 of the Complaint.

5 20. AB denies the allegations in Paragraph 20 of the Complaint.

6 21. AB denies the allegations in Paragraph 21 of the Complaint, except admits  
7 that, on July 21, 2009, after opposition proceedings brought by a third party, the Notice  
8 of Allowance for Warsteiner's intent to use application was issued.

9 22. AB denies the allegations in Paragraph 22 of the Complaint, except admits  
10 that Warsteiner – as permitted by law – requested five extensions of time to file a  
11 statement of use, including on January 18, 2010 and January 5, 2012, and that the last  
12 day to file a statement of use was July 21, 2012.

13 23. AB denies the allegations in Paragraph 23 of the Complaint, except admits  
14 that, on May 14, 2012, Warsteiner appointed two AB attorneys as correspondents and  
15 attorneys of record with respect to Warsteiner's intent-to-use application.

16 24. AB denies the allegations in the first sentence of Paragraph 24 of the  
17 Complaint, except admits that AB submitted PATAGONIA beer labels to the Alcohol  
18 and Tobacco Tax and Trade Bureau (TTB) for Certification of Label Approval (COLA),  
19 which is a prerequisite to selling beer in the United States. AB denies the allegations  
20 in the second and third sentences of Paragraph 24 of the Complaint, except admits that,  
21 on July 17, 2012, AB's attorney, after being appointed by Warsteiner as attorney of  
22 record, filed a statement of use on behalf of Warsteiner with an appropriate specimen,  
23 showing the PATAGONIA beer bottle with a label that AB had submitted to the TTB  
24 for approval and which had been approved by the TTB.

25 25. AB denies the allegations in the first sentence of Paragraph 25 of the  
26 Complaint, except admits that, on July 17, 2012, Warsteiner filed a Statement of Use  
27 with the USPTO, which stated, among other things, that "The mark was first used by  
28 the applicant, or the applicant's related company, licensee, or predecessor in interest at

1 least as early as 07/16/2012, and first used in commerce at least as early as 07/16/2012,  
2 and is now in use in such commerce. The applicant is submitting one specimen for the  
3 class showing the mark as used in commerce on or in connection with any item in the  
4 class, consisting of a(n) PHOTOS OF A BOTTLE.” AB denies the allegations in the  
5 second, third, and fourth sentences of Paragraph 25 of the Complaint. AB denies the  
6 allegations in the fifth sentence of Paragraph 25 of the Complaint, except admits that  
7 the COLA submitted for the PATAGONIA beer shown in the specimen with the  
8 Statement of Use stated that the beer was imported by “Import Brands Alliance,” which  
9 is a DBA of Anheuser-Busch, LLC. AB denies the allegations in the sixth and seventh  
10 sentences of Paragraph 25 of the Complaint, except admits that the specimen included  
11 two photos of a bottle of actual PATAGONIA beer sold in commerce.

12 26. AB denies the allegations in Paragraph 26 of the Complaint, except admits  
13 that, on October 16, 2012, the USPTO issued a trademark registration, Registration No.  
14 4, 226,102, to Warsteiner for PATAGONIA on beer.

15 27. AB denies the allegations in the first sentence of Paragraph 27 of the  
16 Complaint, except admits that, on February 8, 2013, AB’s outside counsel recorded an  
17 assignment document with the USPTO reflecting that Warsteiner assigned the  
18 PATAGONIA registration and trademark to AB on December 20, 2012. AB denies the  
19 allegations in the second sentence of Paragraph 27 of the Complaint, except admits that,  
20 on February 22, 2013, AB’s outside counsel recorded a document with the USPTO with  
21 a correction that AB is a “limited liability company,” not a “corporation” as mistakenly  
22 stated in the document filed a few days earlier. AB denies the allegations in the third  
23 sentence of Paragraph 27 of the Complaint.

24 28. AB denies the allegations in the first sentence of Paragraph 28 of the  
25 Complaint, except admits that the assignment occurred after the USPTO issued the  
26 PATAGONIA registration. AB denies the allegations in the second sentence of  
27 Paragraph 28 of the Complaint.

28 29. The allegations in the first sentence of Paragraph 29 of the Complaint are



1 legal conclusions, which do not require an admission or denial, but if a response is  
2 required, AB denies such allegations. As to the allegations in the second sentence of  
3 Paragraph 29 of the Complaint, AB admits that it did not acquire Warsteiner and that  
4 Warsteiner is a separate entity. AB denies the allegations in the third, fourth, fifth, and  
5 sixth sentences of Paragraph 29 of the Complaint.

6 **Allegations Regarding AB’s False Section 8 & 15 Filing**

7 30. AB denies the allegations in Paragraph 30 of the Complaint.

8 31. AB denies the allegations in the first sentence of Paragraph 31 of the  
9 Complaint, except admits that, on October 5, 2018, AB filed a Combined Declaration  
10 of Use and Incontestability under Sections 8 & 15, which stated, among other things,  
11 that “The mark has been in continuous use in commerce for five consecutive years after  
12 the date of registration . . . and is still in use in commerce on or in connection with all  
13 goods/services.” AB denies the remaining allegations in Paragraph 31 of the  
14 Complaint.

15 32. AB denies the allegations in the first, second, and fourth sentences of  
16 Paragraph 32 of the Complaint. AB denies the allegations in the third sentence of  
17 Paragraph 32 of the Complaint, except admits that “Patagonia” is listed as a registered  
18 trademark in AB InBev’s 2016 annual report, among other annual reports.

19 33. AB denies the allegations in Paragraph 33 of the Complaint, except admits  
20 that AB InBev issued a press release on February 28, 2019, which stated, among other  
21 things: “by mapping our portfolio of brands within each market, we are identifying  
22 opportunities to introduce existing brands into new markets. Examples of this practice  
23 include Argentina’s Patagonia in certain regions of the US . . . .”

24 34. AB denies the allegations in Paragraph 34 of the Complaint.

25 35. AB denies the allegations in the first sentence of Paragraph 35 of the  
26 Complaint. AB denies the allegations in the second sentence of Paragraph 35 of the  
27 Complaint, except admits that Plaintiff Patagonia Provisions, Inc. abandoned its  
28 application to register the mark PATAGONIA PROVISIONS on wine after the USPTO

1 issued a refusal, in part because of AB’s existing trademark rights for PATAGONIA on  
2 beer, but also because the USPTO determined that the primary significance of  
3 “Patagonia” for wine is a generally-known geographic location from which Plaintiff’s  
4 wine would not originate. AB denies the allegations in the third sentence of Paragraph  
5 35 of the Complaint.

6 **Allegations Regarding the Alleged PATAGONIA trademarks**

7 36. AB lacks sufficient knowledge to admit or deny the allegations in  
8 Paragraph 36 of the Complaint, and on that basis denies such allegations.

9 37. AB lacks sufficient knowledge to admit or deny the allegations in  
10 Paragraph 37 of the Complaint, and on that basis denies such allegations.

11 38. AB lacks sufficient knowledge to admit or deny the allegations in  
12 Paragraph 38 of the Complaint, and on that basis denies such allegations.

13 39. AB lacks sufficient knowledge to admit or deny the allegations in  
14 Paragraph 39 of the Complaint, and on that basis denies such allegations.

15 40. AB lacks sufficient knowledge to admit or deny the allegations in  
16 Paragraph 40 of the Complaint, and on that basis denies such allegations.

17 41. AB lacks sufficient knowledge to admit or deny the allegations in  
18 Paragraph 41 of the Complaint, and on that basis denies such allegations.

19 42. AB denies the allegations in Paragraph 42 of the Complaint.

20 43. AB denies the allegations in the first sentence of Paragraph 43 of the  
21 Complaint. AB lacks sufficient knowledge to admit or deny the remaining allegations  
22 in Paragraph 43 of the Complaint, and on that basis denies such allegations.

23 44. AB lacks sufficient knowledge to admit or deny the allegations in  
24 Paragraph 44 of the Complaint, and on that basis denies such allegations.

25 45. AB denies the allegations in Paragraph 45 of the Complaint.

26 46. AB denies the allegations in Paragraph 46 of the Complaint.

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1 63. AB denies the allegations in Paragraph 63 of the Complaint.

2 64. AB denies the allegations in Paragraph 64 of the Complaint.

3 **SECOND CLAIM**

4 **FEDERAL UNFAIR COMPETITION**

5 **(False Designation of Origin and False Description)**

6 **(15 U.S.C. § 1125(a))**

7 65. AB incorporates by reference each of its responses to Paragraphs 1 through  
8 64 as if fully set forth herein.

9 66. AB denies the allegations in Paragraph 66 of the Complaint.

10 67. AB denies the allegations in Paragraph 67 of the Complaint.

11 68. AB denies the allegations in Paragraph 68 of the Complaint.

12 **THIRD CLAIM**

13 **FEDERAL DILUTION OF FAMOUS MARK**

14 **(Trademark Dilution Revision Act of 2006, 15 U.S.C. § 1125(c))**

15 69. AB incorporates by reference each of its responses to Paragraphs 1 through  
16 68 as if fully set forth herein.

17 70. AB denies the allegations in Paragraph 70 of the Complaint.

18 71. AB denies the allegations in Paragraph 71 of the Complaint.

19 72. AB denies the allegations in Paragraph 72 of the Complaint.

20 73. AB denies the allegations in Paragraph 73 of the Complaint.

21 74. AB denies the allegations in Paragraph 74 of the Complaint.

22 **FOURTH CLAIM**

23 **TRADEMARK INFRINGEMENT, DILUTION, AND UNFAIR**

24 **COMPETITION UNDER CALIFORNIA AND COMMON LAW**

25 **(Cal. Bus. & Prof. Code §§ 14245, 14247, 14402, 14415, and 17200 et seq.)**

26 75. AB incorporates by reference each of its responses to Paragraphs 1 through  
27 74 as if fully set forth herein.

28 76. AB lacks sufficient knowledge to admit or deny the allegations in

1 Paragraph 76 of the Complaint, and on that basis denies such allegations.

2 77. AB denies the allegations in Paragraph 77 of the Complaint.

3 78. AB denies the allegations in Paragraph 78 of the Complaint.

4 79. AB denies the allegations in Paragraph 79 of the Complaint.

5 80. AB denies the allegations in Paragraph 80 of the Complaint.

6 81. AB denies the allegations in Paragraph 81 of the Complaint.

7 82. AB denies the allegations in Paragraph 82 of the Complaint.

8 83. AB denies the allegations in Paragraph 83 of the Complaint.

9 84. AB denies the allegations in Paragraph 84 of the Complaint.

10 85. AB denies the allegations in Paragraph 85 of the Complaint.

11 **FIFTH CLAIM**

12 **CANCELLATION OF TRADEMARK REGISTRATION**

13 **(15 U.S.C. § 1119)**

14 86. AB incorporates by reference each of its responses to Paragraphs 1 through  
15 85 as if fully set forth herein.

16 87. The allegations in Paragraph 87 of the Complaint are legal conclusions,  
17 which do not require an admission or denial, but if a response is required, AB denies  
18 such allegations.

19 88. The allegations in Paragraph 88 of the Complaint are legal conclusions,  
20 which do not require an admission or denial, but if a response is required, AB denies  
21 the allegations in Paragraph 88 of the Complaint.

22 89. The allegations in Paragraph 89 of the Complaint are legal conclusions,  
23 which do not require an admission or denial, but if a response is required, AB denies  
24 the allegations in Paragraph 89 of the Complaint.

25 90. AB denies the allegations in Paragraph 90 of the Complaint.

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**SIXTH CLAIM**  
**CANCELLATION OF TRADEMARK REGISTRATION**  
**(15 U.S.C. § 1052(a))**

91. AB incorporates by reference each of its responses to Paragraphs 1 through 90 as if fully set forth herein.

92. AB denies the allegations in Paragraph 92 of the Complaint.

93. AB denies the allegations in Paragraph 93 of the Complaint, except admits that Warsteiner applied to register the PATAGONIA mark in connection with beer, and AB owns Registration No. 4,226,102.

94. AB denies the allegations in Paragraph 94 of the Complaint as it understands them, except admits that its products marketed and sold under its PATAGONIA mark for beer are not from Plaintiffs.

95. AB denies the allegations in Paragraph 95 of the Complaint.

96. AB denies the allegations in Paragraph 96 of the Complaint.

**SEVENTH CLAIM**  
**CANCELLATION OF TRADEMARK REGISTRATION**  
**(15 U.S.C. § 1119)**

97. AB incorporates by reference each of its responses to Paragraphs 1 through 96 as if fully set forth herein.

98. AB denies the allegations in Paragraph 98 of the Complaint.

99. AB denies the allegations in Paragraph 99 of the Complaint.

100. AB denies the allegations in Paragraph 100 of the Complaint.

101. AB denies the allegations in Paragraph 101 of the Complaint.

1 **EIGHTH CLAIM**

2 **RECTIFICATION OF TRADEMARK REGISTRATION**

3 **(15 U.S.C. § 1119)**

4 102. AB incorporates by reference each of its responses to Paragraphs 1 through  
5 101 as if fully set forth herein.

6 103. AB denies the allegations in Paragraph 103 of the Complaint.

7 104. AB denies the allegations in Paragraph 104 of the Complaint.

8 105. The allegations in Paragraph 105 of the Complaint are legal conclusions,  
9 which do not require an admission or denial, but if a response is required, AB denies  
10 such allegations.

11 106. AB denies the allegations in Paragraph 106 of the Complaint.

12 **PRAYER FOR RELIEF**

13 AB denies that Plaintiffs are entitled to any of the grounds for relief enumerated  
14 in their Complaint, or any relief of any kind. Plaintiffs' prayer is further barred by  
15 statute, law, equity, or in view of AB's defenses and rights.

16 **ALLEGATIONS COMMON TO AFFIRMATIVE DEFENSES AND**

17 **COUNTERCLAIMS**

18 107. Patagonia is a well-known geographic region at the southern end of South  
19 America, shared by Argentina and Chile and home to the southern section of the Andes  
20 mountains.

21 108. As Plaintiffs are aware, there are many brands utilizing the "Patagonia"  
22 name with a mountain design or graphic to indicate a connection to the memorable  
23 region.

24 109. One product with a connection to the well-known region is AB's  
25 PATAGONIA beer.

26 110. Since 2012, AB has owned the PATAGONIA trademark for beer in the  
27 United States.

28 111. But for many years before 2012, the PATAGONIA brand has been part of

1 the AB family’s portfolio, with an Argentine brewery settled in the midst of  
2 breathtaking mountains and luscious greenery. So inspiring is the scene that it served  
3 as the inspiration for the PATAGONIA logo currently used in both South America and  
4 the United States.

5 112. In South America, PATAGONIA beer is produced by Cervecería y  
6 Maltería Quilmes (“Quilmes”), originally founded as Brasserie et Cervecerie Quilmes  
7 in 1880. PATAGONIA beer is one of the most popular beers in South America. When  
8 Anheuser-Busch Companies, Inc. and InBev S.A. merged in 2008, Quilmes became  
9 part of the AB family.

10 113. Consumers from the United States who have traveled to South America  
11 are familiar with PATAGONIA beer.

12 114. AB initially imported PATAGONIA beer from Quilmes into the United  
13 States. In 2018, AB decided to produce PATAGONIA beer in California, reducing its  
14 carbon footprint while maintaining its connection to the region with the recipe used in  
15 South America and hops from Patagonia.

16 115. Despite the clear connection between AB’s PATAGONIA beer and the  
17 Patagonia region, the origination of the brand in South America, AB’s trademark rights,  
18 and Plaintiffs’ longstanding recognition of AB’s rights to PATAGONIA on beer,  
19 Plaintiffs have apparently decided that they want to enter the beer market with a  
20 PATAGONIA-branded beer and realize that AB and its rights stand in their way.

21 116. For many years, Plaintiffs have known that AB has the exclusive right to  
22 use PATAGONIA on beer in the United States. Indeed, the U.S. trademark application  
23 resulting in AB’s PATAGONIA registration, and the associated constructive priority  
24 date, dates back to 2006. Plaintiffs could have objected to the application or  
25 registration, but never did.

26 117. Not only did Plaintiffs fail to voice any objection, they have also acted in  
27 a manner that is completely inconsistent with their recent claim that AB’s registration  
28 is invalid or that they have rights which could conceivably preclude AB’s use of



1 PATAGONIA on beer.

2 118. On June 8, 2006, AB's predecessor-in-interest filed with the USPTO an  
3 intent-to-use application for the PATAGONIA mark on beer (the "Application").  
4 Plaintiffs knew or should have known of the Application on or around June 8, 2006.  
5 Plaintiffs could have opposed the Application, but did not, suggesting that they did not  
6 take issue with a third-party's use of PATAGONIA on beer. If Plaintiffs took issue  
7 with such use, they should have said something more than a decade ago.

8 119. Beginning in May 2012, AB filed Certificate of Label Approvals  
9 ("COLAs") with the Alcohol and Tobacco Tax and Trade Bureau to approve AB's use  
10 of various PATAGONIA beer labels. The COLAs that AB submitted in May 2012  
11 showed that the beer was imported by "Import Brands Alliance," which is a DBA of  
12 Anheuser-Busch, LLC. As such approval is a prerequisite to selling beer, Plaintiffs  
13 knew or should have known that AB's sale of PATAGONIA beer in the United States  
14 was imminent.

15 120. In July 2012, AB began using the PATAGONIA mark on beer in the  
16 United States, initially importing the beer from its Argentinian family.

17 121. On July 17, 2012, a Statement of Use was filed with the USPTO showing  
18 use of the PATAGONIA mark on beer in connection with the Application. Plaintiffs  
19 knew or should have known of the Statement of Use on or around July 17, 2012.

20 122. On October 16, 2012, the USPTO issued a trademark registration to AB's  
21 predecessor-in-interest for use of the PATAGONIA mark on beer (Registration No.  
22 4,226,102) ("Registration"). Plaintiffs knew or should have known of AB's  
23 Registration on or around October 16, 2012.

24 123. In February 2013, a document was recorded with the USPTO showing that  
25 Warsteiner had assigned the Registration for the PATAGONIA mark to AB. Plaintiffs  
26 knew or should have known of such assignment in or around February 2013.

27 124. At least by August 2013, Plaintiffs had actual knowledge of AB's  
28 Registration. Plaintiffs knew that AB had the exclusive right to use the PATAGONIA

1 mark on beer in the United States, and understood that they could not use the  
2 PATAGONIA mark on beer. Plaintiffs refrained from using the Patagonia brand name  
3 on beer in recognition of those rights.

4 125. In 2013, Plaintiffs collaborated with New Belgium Brewing Company on  
5 the release of a limited-edition beer to celebrate Plaintiffs' corporate anniversary.  
6 Acknowledging AB's exclusive right to use PATAGONIA on beer, Plaintiffs told the  
7 brewing company that AB owned the trademark rights to beer. Again, Plaintiffs did not  
8 then challenge AB's rights and instead through its statements, actions, and inactions  
9 conceded that AB had the exclusive right to use PATAGONIA on beer, including when  
10 Patagonia Provisions, Inc. released the beer under a different brand called "California  
11 Route."

12 126. In early-to-mid-2015, and again fully aware of AB's rights, Plaintiffs  
13 approached AB about whether AB would be interested in licensing, providing  
14 permission, and/or selling its rights to use PATAGONIA on beer to Plaintiffs. AB was  
15 not interested and, of course, never agreed to sell its rights in the PATAGONIA mark  
16 to Plaintiffs.

17 127. Other conduct by Plaintiffs in 2016 indicated that they understood that AB  
18 had the exclusive right to use PATAGONIA on beer.

19 128. Upon information and belief, Plaintiffs have actual awareness that AB was  
20 selling PATAGONIA beer in U.S. commerce before 2018.

21 129. On October 5, 2018, AB filed a Combined Declaration of Use and  
22 Incontestability under Sections 8 & 15, and AB's Registration became incontestable.

23 130. Between 2006 and the day they filed this lawsuit on April 9, 2019,  
24 Plaintiffs never opposed the Application, attempted to cancel AB's Registration, or in  
25 any manner disputed AB's exclusive right to use the PATAGONIA mark on beer in the  
26 United States.

27 131. To the contrary, for many years, Plaintiffs acted completely inconsistently  
28 with their recently manufactured claims that AB's rights are invalid or that they have

1 rights that could preclude AB from using PATAGONIA on beer.

2 132. On the same day that they filed this lawsuit, Plaintiffs filed multiple  
3 trademark applications for PATAGONIA on beer, demonstrating that they now want  
4 the rights to PATAGONIA on beer that AB owns.

5 133. The USPTO has examined each of Plaintiffs' newest trademark  
6 applications for beer, and rejected those trademark applications on grounds including  
7 Section 2(d) ("Likelihood of Confusion") (citing AB's prior Registration) and Section  
8 2(e)(2) ("Primarily Geographically Descriptive").

9 134. This follows the USPTO's previous rejection of Patagonia, Inc.'s and  
10 Patagonia Provisions, Inc.'s applications to register the PATAGONIA and  
11 PATAGONIA PROVISIONS marks in connection with wine. Those applications were  
12 rejected, in part, under Section 2(a) ("Deceptive Refusal – Geographic Indication for  
13 Wine") and Section 2(d) ("Likelihood of Confusion" refusal, based on AB's prior  
14 Registration). As part of the USPTO's Section 2(a) refusal of the PATAGONIA  
15 PROVISIONS application, the USPTO examiner indicated in a January 21, 2016 office  
16 action (at page 1):

17 In this case, applicant seeks registration of PATAGONIA PROVISIONS  
18 for wine. The designation PATAGONIA in the applied-for mark is a  
19 generally known geographic place or location, as shown by the attached  
20 evidence from Wikipedia®. However, the application record does not  
21 indicate that the goods originate in PATAGONIA, i.e., not the geographic  
22 location named in the mark. In fact the applicant has stated that the goods  
23 do not originate in PATAGONIA. Purchasers would be likely to believe  
24 that the goods originate in the geographic place named in the mark because  
25 it is well known for such goods. See attached evidence from www.wine-  
26 searcher.com that shows this region is well known for wine . . . .

27 135. In the time that Plaintiffs have inexcusably and unreasonably delayed  
28 filing this lawsuit challenging AB's use and registration of PATAGONIA for beer, AB  
has invested significant money and resources in its PATAGONIA beer brand, relevant  
documents and information have been lost, individuals with relevant knowledge no  
longer work at AB, and witnesses' memories have faded.

1 **AFFIRMATIVE DEFENSES**

2 Without assuming any burden of proof that AB would not otherwise bear under  
3 applicable law, AB asserts the following affirmative defenses and reserves the right to  
4 amend its Answer as additional information becomes available:<sup>1</sup>

5 **FIRST AFFIRMATIVE DEFENSE**

6 **(Laches)**

7 136. AB incorporates by reference its allegations in Paragraphs 107 through 135  
8 of this Answer and Counterclaim as if they were fully set forth herein.

9 137. Plaintiffs have had constructive and actual notice of AB's rights to and use  
10 of the mark PATAGONIA for beer, and AB's Registration, for at least six years before  
11 filing suit.

12 138. Through their statements, conduct, actions, and/or inaction, Plaintiffs have  
13 acknowledged that AB owns rights to the PATAGONIA mark on beer for at least six  
14 years prior to filing this lawsuit.

15 139. Plaintiffs' delay in filing this lawsuit, including but not limited to their  
16 belated challenges to AB's Registration, was unreasonable.

17 140. Plaintiffs' delay in filing this lawsuit has caused and will cause prejudice  
18 to AB, including but not limited to both evidentiary prejudice due to the passage of  
19 time, and economic prejudice as AB has invested in its PATAGONIA brand and  
20 product.

21 141. Accordingly, the doctrine of laches bars Plaintiffs' equitable and legal  
22 claims, in whole or in part.

23 **SECOND AFFIRMATIVE DEFENSE**

24 **(Waiver)**

25 142. AB incorporates by reference its allegations in Paragraphs 107 through 141  
26 of this Answer and Counterclaim as if they were fully set forth herein.

27 \_\_\_\_\_  
28 <sup>1</sup> AB continues to assert that Plaintiffs' Complaint fails to state a claim for relief as to  
the cancellation claims against AB's PATAGONIA registration.

1 143. Through their statements, conduct, actions, and/or inaction, Plaintiffs  
2 waived any rights they had to object to or challenge AB's Registration or AB's right to  
3 use or use of PATAGONIA.

4 144. The doctrine of waiver bars Plaintiffs' claims in whole or in part.

5 **THIRD AFFIRMATIVE DEFENSE**

6 **(Acquiescence)**

7 145. AB incorporates by reference its allegations in Paragraphs 107 through 144  
8 of this Answer and Counterclaim as if they were fully set forth herein.

9 146. Through their statements, conduct, actions, and/or inaction, Plaintiffs  
10 acquiesced in AB's Registration and AB's right to use and use of PATAGONIA in  
11 connection with beer.

12 147. The doctrine of acquiescence bars Plaintiffs' claims in whole or in part.

13 **FOURTH AFFIRMATIVE DEFENSE**

14 **(Estoppel)**

15 148. AB incorporates by reference its allegations in Paragraphs 107 through 147  
16 of this Answer and Counterclaim as if they were fully set forth herein.

17 149. Through their statements, conduct, actions, and/or inaction, Plaintiffs are  
18 estopped from objecting to or challenging AB's Registration or AB's right to use or use  
19 of PATAGONIA.

20 150. The doctrine of estoppel bars Plaintiffs' claims in whole or in part.

21 **FIFTH AFFIRMATIVE DEFENSE**

22 **(Unclean Hands)**

23 151. AB incorporates by reference its allegations in Paragraphs 107 through 150  
24 of this Answer and Counterclaim as if they were fully set forth herein.

25 152. Plaintiffs have engaged in inequitable conduct relating to the subject  
26 matter of their claims. These include, but are not limited to their statements, conduct,  
27 actions, and/or inaction towards AB and AB's rights; that – with knowledge of AB's  
28 rights – Plaintiffs are attempting to encroach upon those rights to PATAGONIA in beer;

1 even after the Section 2(a) and Section 2(d) rejections of their prior applications in Class  
2 33, Plaintiffs recently filed multiple trademark applications to register PATAGONIA  
3 and PATAGONIA PROVISIONS for beer knowing that AB has used PATAGONIA  
4 on beer and has a registration for that mark in connection with beer, and in those  
5 applications, Plaintiffs have stated that they do not believe that any other person has the  
6 right to use that mark in commerce in connection with beer; as well as Plaintiffs' more  
7 recent efforts leading up and through this litigation to engender purported confusion  
8 with AB.

9 153. The doctrine of unclean hands bars Plaintiffs' claims in whole or in part.

10 **SIXTH AFFIRMATIVE DEFENSE**

11 **(Statute of Limitations)**

12 154. AB incorporates by reference its allegations in Paragraphs 107 through 153  
13 of this Answer and Counterclaim as if they were fully set forth herein.

14 155. Plaintiffs' claims are barred in whole or in part by the applicable statute of  
15 limitations, including but not limited to the two-year limitations period set forth in  
16 California Code of Civil Procedure Section 339, the three-year limitations period set  
17 forth in California Code of Civil Procedure Section 338(d), and the four-year limitations  
18 period set forth in California Business & Professions Code Section 17208.

19 **SEVENTH AFFIRMATIVE DEFENSE**

20 **(Incontestable Federal Registration)**

21 156. AB incorporates by reference its allegations in Paragraphs 107 through 155  
22 of this Answer and Counterclaim as if they were fully set forth herein.

23 157. AB owns a valid federal trademark registration for PATAGONIA on beer.

24 158. AB's Registration bars Plaintiffs' claims in whole or in part, including by  
25 way of example and not limitation, Plaintiffs' state law dilution claims as per 15 U.S.C.  
26 § 1125(c)(6) and relevant case law.

27 159. The fact that AB's Registration is incontestable further bars certain of  
28 Plaintiffs' claims or allegations in whole or in part.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Priority)**

160. AB incorporates by reference its allegations in Paragraphs 107 through 159 of this Answer and Counterclaim as if they were fully set forth herein.

161. AB has rights in the PATAGONIA mark for beer and related goods and services that are senior to any rights established by Plaintiffs.

162. AB's priority bars Plaintiffs' claims in whole or in part.

**NINTH AFFIRMATIVE DEFENSE**

**(15 U.S.C. § 1064)**

163. AB incorporates by reference its allegations in Paragraphs 107 through 162 of this Answer and Counterclaim as if they were fully set forth herein.

164. 15 U.S.C. § 1064 bars Plaintiffs' cancellation claims in whole or in part.

**TENTH AFFIRMATIVE DEFENSE**

**(Fair Use / First Amendment)**

165. AB incorporates by reference its allegations in Paragraphs 107 through 164 of this Answer and Counterclaim as if they were fully set forth herein.

166. AB has the right, under the law and in equity, to refer to the roots of its product, its ties to the Patagonia region, and to offer to donate proceeds from sales to charity or to support the environment.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(Abandonment)**

167. AB incorporates by reference its allegations in Paragraphs 107 through 166 of this Answer and Counterclaim as if they were fully set forth herein.

168. Upon information and belief, Plaintiffs have abandoned their rights in the PATAGONIA trademark through acts or omissions that have caused the mark to lose its significance as a mark, under 15 U.S.C. §1127.

169. Upon information and belief, among other things, Plaintiffs have (1) failed to take reasonable steps to maintain the quality of trademarked products bearing the

1 PATAGONIA trademark; (2) failed to exercise adequate quality control over licensees  
2 of the PATAGONIA trademark such that Plaintiffs have engaged in naked licensing;  
3 and (3) failed to police their trademarks such that many third parties have used the  
4 PATAGONIA mark for non-clothing products over which Plaintiffs claim rights (e.g.,  
5 through its Sections 2(a) and 43(c) claims to rights), and Plaintiffs have not prevented  
6 such uses.

7 170. Accordingly, the doctrine of abandonment bars Plaintiffs' claims in whole  
8 or in part.

9 **COUNTERCLAIMS**

10 AB counterclaims against Plaintiffs as follows:

11 **FIRST CLAIM**

12 **DECLARATORY RELIEF OF NON-INFRINGEMENT**

13 **(28 U.S.C. § 2201)**

14 171. AB incorporates by reference its allegations in Paragraphs 1 through 170  
15 of this Answer and Counterclaim as if they were fully set forth herein.

16 172. Based on the lawsuit filed by Plaintiffs, and AB's affirmative defenses, a  
17 controversy has arisen and currently exists between the parties regarding AB's  
18 Registration and use of the PATAGONIA mark, including whether AB has infringed  
19 on Plaintiffs' trademarks and whether AB has engaged in unfair competition.

20 173. AB's use of the PATAGONIA mark does not and has not infringed on any  
21 of Plaintiffs' trademarks, at common law or as registered.

22 174. AB does not engage in, and has not engaged in, unfair competition or false  
23 association through its use of the PATAGONIA mark.

24 175. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et*  
25 *seq.*, AB requests a declaration from the Court that AB does not and has not infringed  
26 on any of Plaintiffs' trademarks, at common law or as registered, and AB does not and  
27 has not engaged in unfair competition through its use of the PATAGONIA mark.

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**SECOND CLAIM**  
**DECLARATORY RELIEF OF NON-DILUTION**  
**(28 U.S.C. § 2201)**

176. AB incorporates by reference its allegations in Paragraphs 1 through 175 of this Answer and Counterclaim as if they were fully set forth herein.

177. Based on the lawsuit filed by Plaintiffs, and AB’s affirmative defenses, a controversy has arisen and currently exists between the parties regarding AB’s Registration and use of the PATAGONIA mark.

178. Plaintiffs cannot demonstrate that they are the owner of a famous mark.

179. AB’s use of the PATAGONIA mark does not and is not likely to cause dilution of Plaintiffs’ PATAGONIA mark.

180. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*, AB requests a declaration from the Court that AB does not and is not likely to cause dilution of Plaintiffs’ PATAGONIA mark.

**THIRD CLAIM**  
**DECLARATORY RELIEF OF VALIDITY OF REGISTRATION**  
**(28 U.S.C. § 2201)**

181. AB incorporates by reference its allegations in Paragraphs 1 through 180 of this Answer and Counterclaim as if they were fully set forth herein.

182. Based on the lawsuit filed by Plaintiffs, and AB’s affirmative defenses, a controversy has arisen and currently exists between the parties regarding AB’s Registration and use of the PATAGONIA mark.

183. AB owns the trademark registration for PATAGONIA on beer (Registration No. 4,226,102).

184. AB uses the PATAGONIA mark in commerce on all of the goods identified in the Registration and the mark has been continuously used in commerce for five consecutive years. On October 5, 2018, AB filed a Combined Declaration of Use and Incontestability under Sections 8 & 15, and AB’s Registration became

1 incontestable.

2 185. AB did not procure its Registration through fraud on the USPTO.

3 186. AB has not abandoned the PATAGONIA mark.

4 187. At the time the Registration issued in 2012, PATAGONIA on beer did not  
5 falsely suggest a connection with Plaintiffs.

6 188. There is no basis for cancelling AB's Registration.

7 189. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et*  
8 *seq.*, AB requests a declaration from the Court that AB's Registration is valid and  
9 incontestable, and that AB owns exclusive, valid rights to the mark PATAGONIA in  
10 connection with beer.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Defendant and Counterclaimant AB prays for relief as follows:

- 13 A. Entry of judgment in favor of AB against Plaintiffs;
- 14 B. Entry of declaratory judgment finding that AB does not and has not  
15 infringed on any of Plaintiffs' trademarks;
- 16 C. Entry of declaratory judgment that AB does not and has not engaged in  
17 unfair competition through its use of the PATAGONIA mark;
- 18 D. Entry of declaratory judgment that AB's use of the PATAGONIA mark  
19 does not and is not likely to cause dilution of Plaintiffs' PATAGONIA  
20 word mark;
- 21 E. Entry of declaratory judgment that AB's Registration is valid and  
22 incontestable, and that AB owns exclusive, valid rights to the mark  
23 PATAGONIA in connection with beer;
- 24 F. An order that Plaintiffs take nothing by their Complaint against AB;
- 25 G. An order denying any and all of Plaintiffs' requests for equitable relief;
- 26 H. An order dismissing Plaintiffs' Complaint in its entirety, with prejudice;
- 27 I. An order awarding AB its fees, costs, and disbursements incurred in  
28 connection with this action, including reasonable attorneys' fees; and

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J. For such other and further relief as this Court deems just and proper, or as otherwise allowed under the law.

Dated: October 4, 2019 COOLEY LLP

/s/ Bobby Ghajar  
Bobby Ghajar  
Amanda Main  
Dina Roumiantseva  
Attorneys for Defendant  
ANHEUSER-BUSCH, LLC

**DEMAND FOR JURY TRIAL**

Defendant Anheuser-Busch, LLC demands a jury trial on its counterclaims.

Dated: October 4, 2019 COOLEY LLP

*/s/ Bobby Ghajar*

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Bobby Ghajar  
Amanda Main  
Dina Roumiantseva  
Attorneys for Defendant  
ANHEUSER-BUSCH, LLC

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