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

Proceeding	91243647
Party	Plaintiff Blacklands Malt, LLC
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Signature	/Samantha Ade/
Date	04/22/2019
Attachments	2019.4.22 Final Public Ade Declaration.pdf(245565 bytes ) Exhibit A.pdf(1752139 bytes ) Exhibit B.pdf(1242913 bytes ) Exhibit C.pdf(317450 bytes ) Exhibit D.pdf(2929066 bytes ) Exhibit E.pdf(133443 bytes ) Exhibit F.pdf(975491 bytes ) Exhibit G.pdf(2447787 bytes ) Exhibit H.pdf(1848884 bytes ) Exhibit I.pdf(352203 bytes ) Exhibit J.pdf(608013 bytes ) Exhibit K.pdf(783224 bytes ) Exhibit L Part 1.pdf(4810166 bytes ) Exhibit L Part 2.pdf(244542 bytes ) Exhibit L Part 3.pdf(2638902 bytes ) Exhibit L Part 4.pdf(2581772 bytes ) Exhibit M.pdf(1849643 bytes ) Exhibit N.PDF(4397576 bytes ) Exhibit O.pdf(1236944 bytes )

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

In the matter of Application Serial No. 87731387  
By M Distillery, Inc. for the Mark: BLACKLAND DISTILLERY  
Published in the *Official Gazette* on May 22, 2018

BLACKLANDS MALT, LLC,

Opposer,

v.

M DISTILLERY, INC.,

Applicant.

Opposition No. 91243647

Serial No. 87731387

**DECLARATION OF BRANDON ADE**

I, Brandon Ade, declare under penalty of perjury as follows:

1. I am currently the managing partner at Opposer Blacklands Malt, LLC (“Opposer”). I submit this declaration to provide relevant information regarding Opposer’s use and enforcement of the BLACKLANDS MALT mark in United States commerce, the recognition of the BLACKLANDS MALT mark among U.S. consumers. I also provide herein relevant information concerning Applicant M Distillery, Inc.’s BLACKLAND DISTILLERY mark that is the subject of Application No. 87731387 and this proceeding.

2. The facts set forth herein are based on my personal knowledge and on information contained in Opposer’s business records regularly maintained by me in the normal course of business and to which I have regular access in the course of my job. Unless otherwise noted, the exhibits to which I refer

and which are attached to this declaration are copies of documents and other materials from Opposer's business records kept in the ordinary course of business.

### **I. Job Responsibilities, Experience, and Education**

3. As the founder and managing partner of Opposer, a position I have held since 2012, my responsibilities include sales, business administration, regulatory compliance, staffing, payroll, accounting, financing, customer support, production management, supply chain management, business development, quality control, branding, marketing, advertising, and other responsibilities required in the course of running a manufacturing business.

4. Prior to my current positions, I was an Applications Engineer at Imagination Technologies from 2012 to 2013, where my responsibilities included customer technical support, technical field support, and technical code support for IMG's line of 3D graphics accelerators. Prior to that, I was a Senior Applications Engineer at Freescale Semiconductor from 2005 to 2012, where my responsibilities included software development, in-house technical training, project management, customer technical support, technical field support, and software tools development. I obtained a Bachelor of Science in Computer Engineering from Purdue University in 2005. I also obtained a Malting Training Certificate from the Canadian Malting Barley Technical Centre in Winnipeg, Canada in 2012.

5. I have been on the Board of Directors of the Craft Maltsters Guild since 2017. Opposer is a member of the Brewer's Association, American Distilling Institute, Texas Craft Brewers Guild.

6. I have been an invited speaker at industry events, including The Austin Food + Wine Festival, Texas Craft Brewers Guild, Craft Maltsters Guild, a craft brewer panel at Craft Pride bar, Pulse Innovation Summit, Farm and Ranch Freedom Alliance Farm and Food Leadership Conference; Black Star Co-op (brewpub); Oskar Blues Brewery; Pint House Pizza; Hops & Grain Brewing; Oasis Texas Brewing Company; and Vista Brewing.

## **II. Opposer's Business and General History of the BLACKLANDS MALT Mark**

7. Opposer is in the business of manufacturing malt for use by distilleries and breweries and also engages in other business activities including professional consulting in malt production for commercial malthouses, recipe guidance for breweries and distilleries, and providing technical training and educational seminars for the malting, brewing, and distilling industry. Opposer also sells branded merchandise, including hats, T-shirts, glassware, stickers, koozies, and keychains, representative examples of which are attached as Exhibit A.

8. Opposer is Texas's first modern manufacturer of malted and raw grains for sale to brewers, distillers, homebrew shops, and end consumers.

9. Other than water, malt is the primary ingredient by weight in beer and in some distilled spirits, including malt whisky.

10. Opposer commissioned Texas A&M University and individual producers to conduct research to identify a strain of barley that would grow in Texas so distillers and brewers could use Opposer's goods to produce the first truly local beers and spirits in Texas history.

11. Opposer commenced use of the BLACKLANDS MALT mark in connection with the sale of malt in December 2013, when Opposer sold its first bag of malt to a homebrewer at its production facility in Leander, Texas.

12. Opposer's products have been sold to countless homebrewers and more than 90 commercial brewers and distillers.

13. Opposer has made direct sales to 18 states.

14. Opposer selected the BLACKLANDS MALT mark because at the time of its inception Opposer had commissioned research on barley production in central Texas, including portions of the Blackland Prairies, and Opposer was inspired by the individuals from central and west Texas involved in crop production. Opposer adopted the BLACKLANDS MALT mark to honor these individuals who

operated in the background, unknown to most, and to draw attention to the little-known Blackland Prairies Ecoregion of Texas. Opposer further selected the name because it was not in use in beer, spirits, or malt, and had no nationwide recognition or use in the alcoholic-beverages industry. I researched usage, trademark availability, and common law usage, and found no competing usage for the terms “Blackland” or “Blacklands” in the food, beer, or spirits categories.

15. Opposer is regularly referred to by consumers as “Blacklands” alone.

16. Since the launch of the BLACKLANDS MALT brand in 2013, Opposer has been continuously using the BLACKLANDS MALT mark in US commerce in connection with malt for brewing and distilling and has expanded use of the mark to include consulting services and a variety of common consumer goods such as glassware, clothing, hats, keychains, and stickers.

17. BLACKLANDS MALT products are promoted by brewers and distillers to consumers and purchasers as key ingredients of finished beers and distilled spirits, and the BLACKLANDS MALT mark is used in connection with such promotion in packaging and marketing throughout Texas and beyond.

18. In 2013, the BLACKLANDS MALT mark began to be used in connection with sales of beer to end consumers, and since then the mark has been used continuously in connection with these goods. Attached hereto at Exhibit B is a true and correct copy of a representative sample of a December 2013 promotion for beer using the BLACKLANDS MALT mark. Additional representative samples are found at 14 TTABVUE 263, 747, 749, 751, 753, 765, 775, 777, 789, 791, 794, 802, 805, 808, 810, 815–19, 824, 830, 838, 842, 849–56, 866, 876–883, 887, 897–899, 909–921, 925–29, 933, 937–39, 963, 971–73, 982–84, and 992–94.

19. I have observed numerous labels of beer sold to retail consumers that have included the BLACKLANDS MALT mark on the label from breweries including but not limited to Burial Brewing, Circle Brewing, Clown Shoes Beer, and Jester King Brewery.

20. Attached as Exhibit C are true and correct copies of photographs I took on April 17, 2019, showing the can for Land of Eternity Rolling Plains Lager, brewed for sale by Burial Brewing in Asheville, North Carolina, in collaboration with Jester King Brewery that includes the BLACKLANDS MALT mark prominently displayed on the front of the can and the BLACKLANDS MALT logo on the back of the can.

21. Attached as Exhibit D are true and correct reproductions of representative examples of Jester King labels with which I am familiar that include the BLACKLANDS MALT mark.

22. Attached as Exhibit E is a true and correct copy of the label for Jester King Brewery's Part & Parcel beer, first released in March 2017, which noted on the beer's label:

Part & Parcel is the first beer in modern history brewed with 100% Texas-Grown malted barley. Its origin dates back four years to when Blacklands Malt in Leander, Texas began its mission to rekindle Texas barley growing. . . . We thank Brandon Ade at Blacklands for his hard work and persistence in making Texas malted barley a reality.

23. Attached as Exhibit F is a true and correct copy of the label for Circle Brewing's Archetype Historical IPA beer, first released in 2016, which notes that the beer was created "[w]orking closely with Blacklands Malt."

24. I have observed numerous brewpubs and taprooms, including but not limited to Austin Beerworks, Black Star Co-op, Blue Owl Brewing, Jester King Brewery, Oasis Texas Brewing Company, Oskar Blues Brewery, Red Horn Coffee House & Brewing Co., Oddwood Ales, Pinthouse Pizza, and Whitestone Brewery, displaying the BLACKLANDS MALT mark at the point of sale to retail consumers.

25. Attached as Exhibit G is a true and correct copy of a photograph I took in June 2018 at Black Star Co-op, showing the BLACKLANDS MALT logo next to each beer brewed with BLACKLANDS MALT goods on the beer menu.

26. Attached as Exhibit H is a true and correct copy of a photograph I took in May 2018 at Oasis Texas Brewing Company, listing the BLACKLANDS MALT mark along with the beer name.

27. Attached as Exhibit I is a true and correct copy of a photograph I took in or around September 2016 of a menu at Oskar Blues Brewing Austin that includes the BLACKLANDS MALT mark alongside the beer name.

28. In 2015, the BLACKLANDS MALT mark began to be used in connection with distilled spirits, and since then the mark has been used continuously in connection with these goods and services. Attached hereto as Exhibit J is a representative sample of promotion for distilled spirits using the BLACKLANDS MALT mark. Additional representative samples are attached at 14 TTABVUE 767, 769, 779, 793, 869–875, 923, 945.

29. I have observed sales of both beer and distilled spirits by at least two of Opposer's customers, Treaty Oak Brewing & Distilling and Real Ale Brewing (as Real Ale Spirits).

30. Through the Craft Maltsters Guild, I am aware of numerous manufacturers that produce both malt and beer or spirits, including, among others, Admiral Maltings (malt and beer), Bentley Heritage (malt and spirits); Colorado Malting Company (malt and beer), Eckert Malting & Brewing (malt and beer), Leopold Brothers (malt and spirits), and West Branch Malts (malt and spirits).

31. In 2015, the BLACKLANDS MALT mark began to be used in connection with consulting services, and since then the mark has been used continuously in connection with these services.

32. Pursuant to communications between the parties granting license and permission, in January 2016 Real Ale Brewing produced and sold a special edition "Real Ale Brewer's Cut No. 23 ESB" that was brewed with Opposer's BLACKLANDS MALT products and was distributed and sold bearing the Blacklands Malt logo. Opposer sampled the "Real Ale Brewer's Cut No. 23 ESB" product before sale and granted express permission for use of the BLACKLANDS mark in connection with the product. Attached as Exhibit K is a true and correct copy of a photograph I took in or around January 2016 of the six-pack as it was distributed to stores throughout Texas.

33. Pursuant to communications between the parties granting license and permission, in March 2016 Whitestone Brewery produced and sold a special edition “Smoak on the Blacklands” beer that was brewed with Opposer’s BLACKLANDS MALT products. Opposer sampled the “Smoak on the Blacklands” product before sale and granted express permission for use of the BLACKLANDS mark in connection with the product.

34. Pursuant to communications between the parties granting license and permission, in 2018, Oskar Blues Brewery produced and sold a special edition “Blacklands Barleywine” that was brewed with Opposer’s BLACKLANDS MALT products. Opposer sampled the “Blacklands Barleywine” product before sale and granted express permission for use of the BLACKLANDS mark in connection with the product. Oskar Blues held a special release event at Oskar Blues’s Austin brewery to celebrate the event and invited Opposer to speak at the event.

### **III. Success and Public Recognition of the BLACKLANDS MALT Brand**

35. Opposer’s goods under the BLACKLANDS MALT mark have been offered for sale throughout the United States since well before December 2017. Opposer’s goods under the BLACKLANDS MALT mark are offered for sale from Opposer’s production facility in Leander, Texas, shipped nationwide, and are and available for sale at home brewing stores in Texas, including Austin Homebrew Supply, SoCo Homebrew Supply, and Craft Brewing Shop.

36. Opposer has made direct sales in Texas, Pennsylvania, Arizona, Tennessee, Louisiana, Nevada, Wisconsin, North Carolina, Massachusetts, Michigan, Oklahoma, Kansas, Ohio, Florida, Missouri, Colorado, Oregon, and Illinois. Opposer’s goods are also sold through Austin Homebrew Supply, SoCo Homebrew Supply, and Craft Brewing Shop—retail outlets that ship nationwide.

37. These trade channels are the ordinary trade channels for craft malted grains for brewing and distilling.



38. Since 2014, beer bearing or promoted using the BLACKLANDS MALT mark have been available in bars, grocery stores, taprooms, brewpubs, breweries, and liquor stores.

39. Opposer's malt under the BLACKLANDS MALT mark is targeted towards and purchased by brewers, distillers, and homebrewers, who are consumers of legal drinking age, a group that includes consumers of all sophistication levels. These consumers are the typical consumers of malt, the goods sold in connection with Opposer's common law mark and identified in Opposer's applications asserted in this proceeding.

40. Beer sold by third parties and bearing the BLACKLANDS MALT mark or promoted using the BLACKLANDS MALT mark is targeted towards and purchased by consumers of legal drinking age, a group that includes consumers of all sophistication levels. These consumers are the typical consumers of beer, the goods identified in Opposer's Notice of Opposition as being sold bearing or in connection with Opposer's common law mark.

41. Distilled spirits sold by third parties and advertising the BLACKLANDS MALT mark is targeted towards and purchased by consumers of legal drinking age, a group that includes consumers of all sophistication levels. These consumers are the typical consumers of distilled spirits, the goods identified in Opposer's Notice of Opposition as being sold in connection with Opposer's common law mark.

42. Opposer engages in a variety of promotional activities for its goods and services under the BLACKLANDS MALT mark, including social media postings on Facebook, Twitter, and Instagram; in-person events at breweries and festivals; speaking engagements; and the annual BLACKLANDS MALT Blacklands Beershare event.

43. Opposer also advertises its goods and services through its website at [www.blacklandsmalt.com](http://www.blacklandsmalt.com) (the "Website"), which prominently displays the BLACKLANDS MALT mark at the top of every page. Attached hereto as Exhibit L are true and correct copies of pages from [www.blacklandsmalt.com](http://www.blacklandsmalt.com) as of April 13, 2019.

44. Opposer's customers also promote the BLACKLANDS MALT mark through co-sponsored events, promotional flyers, packaging materials, and press releases.

45. Opposer also uses social media to advertise its goods under the BLACKLANDS MALT mark, including pages on Facebook, Instagram, and Twitter.

46. Opposer holds an annual public "Blacklands Beershare" event which is a sponsored event held at its place of business in Leander, Texas. The Beershare is free and open to the public and is heavily advertised via social media, flyers, public postings at universities, and inside brewing and distilling customers taprooms. Opposer partners with brewing and distilling customers using their malt to donate beer and spirits for the event which are then served during the event. There is a heavy amount of co-branding and co-sponsorship that occurs with the BLACKLANDS MALT mark and the mark of Opposer's customers leading up to and during the event. Representative examples of promotional materials for the Beershare events are attached as Exhibit M.

47. Over the years, Opposer's goods have garnered substantial unsolicited media coverage throughout the United States. I am aware of coverage of the BLACKLANDS MALT mark in the following publications:

- (a) Newspapers
  - (i) The Austin Chronicle
  - (ii) The Austin-American Statesman
  - (iii) Community Impact Newspaper
  - (iv) Houston Chronicle
  - (v) San Antonio Express-News
- (b) Magazines
  - (i) Austin Monthly
  - (ii) Austin Beer Guide
  - (iii) Beverage Master: Craft Spirits & Brew Magazine
  - (iv) Brewer & Distiller International

- (v) Craft Beer & Brewing Magazine
  - (vi) Draft Magazine
  - (vii) Edible Austin
  - (viii) Imbibe Magazine
  - (ix) Paste Magazine
  - (x) San Antonio Current
  - (xi) Spirited Magazine
  - (xii) TakePart
- (c) Books
- (i) Mallett, John, *Malt: A Practical Guide from Field to Brewhouse*
  - (ii) Zimmerman, Jereme, *Brew Beer Like a Yet: Traditional Techniques and Recipes for Unconventional Ales, Gruits, and Other Ferments Using Minimal Hops*
  - (iii) Thomas, Dave, *The Craft Maltsters' Handbook*
  - (iv) Toth, Gabe, *Craft Floor Malting, A Practical Guide*
- (d) Websites and Blogs
- (i) Accidental Brewing
  - (ii) Allaboutbeer.com
  - (iii) AgriLife TODAY
  - (iv) Austin 360
  - (v) Austin 360 Spirits
  - (vi) Beer in Big D
  - (vii) Beeradvocate.com
  - (viii) Beerawareness.com
  - (ix) Beerbasics.com
  - (x) Beerandbrewing.com
  - (xi) Beerstreetjournal.com

- (xii) Beers and Shenanigans
- (xiii) Beer with Blake
- (xiv) Beer Pulse
- (xv) Bitch Beer
- (xvi) Brewbound
- (xvii) Brewbroski.com
- (xviii) Craftbeer.com
- (xix) Craftbrewingbusiness.com
- (xx) Craft Beer Austin
- (xxi) Craft By Under My Host
- (xxii) Craftmalting.com
- (xxiii) Craftpac.org
- (xxiv) Do512.com
- (xxv) Eats Blog
- (xxvi) Facebook.com
- (xxvii) Farm Boy Farms
- (xxviii) Farm and Ranch Freedom Alliance
- (xxix) HEB
- (xxx) Homebrewfinds.com
- (xxxi) Hop Culture
- (xxxii) Instagram.com
- (xxxiii) Liquid Austin
- (xxxiv) Mashing-in.com
- (xxxv) Moreno's Liquors
- (xxxvi) Mybeerbuzz.blogspot.com

- (xxxvii) Northwest Beer Guide
- (xxxviii) Pink Boots Society
- (xxxix)RateBeer
- (xl) San Antonio Express-News
- (xli) Scrumptiouschef.com
- (xlii) Taylorpress.net
- (xliii) Tenemu.com
- (xliv) TexasHillCountry.com
- (xlv) Texas Craft Brewers Guild
- (xlvi) Texas Craft Brewers Festival
- (xlvii) Texas Brew and Barbecue
- (xlviii) Twitter.com
- (xlix) Untappd.com
- (l) The Full Pint Craft Beer News
- (li) Williamson County Libertarian Party
- (lii) You Stay Hopy Austin
- (liii) You Stay Hopy Dallas
- (liv) Youtube.com
- (lv) Whichcraft.com
- (lvi) Westcoastersd.com
- (e) Other:
  - (i) American Malting Barley Association, Inc.
  - (ii) Austin Food & Wine Alliance
  - (iii) Ben E. Keith Co.
  - (iv) Craft Pride

- (v) The Flying Saucer
- (vi) Chipotle
- (vii) Drive The District
- (viii) Texas A&M University
- (ix) Texas Department of Agriculture

48. Representative examples of this unsolicited media coverage are attached at 14 TTABVUE.

49. All of the foregoing sales, advertising, and publicity of goods under and in connection with the BLACKLANDS MALT mark have resulted in strong consumer recognition of the BLACKLANDS MALT brand in the United States.

50. Because of the overwhelming success and appeal of BLACKLANDS MALT goods, and Opposer's exclusive use of the BLACKLANDS MALT mark in connection with malt and with alcoholic beverages, the BLACKLANDS MALT mark has acquired enormous value and become well known to the public and to the trade as identifying and distinguishing Opposer exclusively and uniquely as the source of goods under the mark. Thus, in addition to its inherent distinctiveness, the BLACKLANDS MALT mark has acquired distinctiveness in the minds of consumers.

#### **IV. Opposer's Enforcement of the BLACKLANDS MALT Mark**

51. Opposer has engaged in an active enforcement program to protect its BLACKLANDS MALT mark.

52. Opposer has successfully enforced its exclusive rights in the BLACKLANDS MALT mark against Texas Beer Company. Opposer became aware in late April 2018 that Texas Beer Company had started to produce a "Blacklands Porter" beer. Opposer immediately contacted Texas Beer Company, which apologized and acknowledged the confusion created. Opposer and Texas Beer attempted to negotiate a licensing agreement but were unsuccessful, and Texas Beer agreed to cease using "Blacklands

Porter” after the then-current production run. Opposer has confirmed that the beer has been re-branded to “Bill Pickett Porter.”

53. As a result of Opposer’s enforcement activities, other than the Applicant’s mark challenged in this proceeding and the conduct at issue in the enforcement listed in the foregoing paragraph, Opposer’s use of the BLACKLANDS MALT mark is substantially exclusive. Thus, the BLACKLANDS MALT mark, as used in connection with malt and alcoholic beverages, uniquely identifies Opposer’s goods.

## **VI. Applicant, the BLACKLAND DISTILLERY Mark, and Consumer Confusion**

54. On February 1, 2018, I learned that Applicant was planning to use the BLACKLAND DISTILLERY mark when I received a call from an unidentified male caller from a Fort Worth area code inquiring whether Opposer was opening a new distillery in Fort Worth. Opposer was not aware of Applicant or the BLACKLAND DISTILLERY mark before February 1, 2018.

55. In response to the call, I discovered a news article noting a planned distillery in Fort Worth using the name “Blackland Distillery” and found the Application for BLACKLAND DISTILLERY.

56. Upon learning of Applicant’s application, counsel for Opposer promptly contacted M Distillery to inform it of Opposer’s objection to the use of the BLACKLAND DISTILLERY mark. Attached hereto as Exhibit N are true and correct copies of Opposer’s February 15, 2018 letter to Applicant and Applicant’s February 21, 2018 response.

57. Opposer has no business relationship with Applicant and has never authorized Applicant or otherwise permitted Applicant to use or register the BLACKLAND DISTILLERY mark or any other mark similar to the BLACKLANDS MALT mark.

58. The goods identified in Applicant’s Application Serial No. 87731387 at issue in this action, namely “distilled spirits,” are related to Opposer’s goods under the BLACKLANDS MALT mark because Opposer produces malt for beer and distilled spirits. Brewers and distillers using Blacklands Malt’s goods

to create their finished beer and distilled spirits advertise the use of Blacklands Malt in the finished product, and the Blacklands Malt mark regularly appears on alcoholic beverage labels sold in commerce. Distillers using Blacklands Malt's goods advertise the use of Blacklands Malt's products. Malt is inherently a word associated with beer and spirits, especially certain categories of distilled spirits such as scotch whiskey, single malt whiskey, malt whiskey, and the like which are commonly referred to as simply "malts." Distillers regularly brand these products using the terms "malt" or "single malt", and it is possible that Applicant could release a product using similar language, such as "Blackland Single Malt." The ubiquitous use of the term "malt" as related to spirits leads to a high level of likelihood that Applicant will release a product bearing the terms "Blackland[s]" and "malt", with the mark appearing on packaging, advertising, and promotional materials.

59. Distilled spirits are typically sold to drinking-age adults, who are also the consumers of beer and distilled spirits sold bearing or advertised using the BLACKLANDS MALT mark.

60. In the alcoholic beverage market, distilled spirits and beer are inexpensive, generally sold at retail for \$5-\$100. Because they are inexpensive, consumers do not exercise particular care when purchasing distilled spirits, increasing the likelihood of consumer confusion. Indeed, based on my experience in the industry, I have encountered members of the general public that regularly misidentify our business as a brewery or distillery.

61. I have also encountered members of the general public during beer release events for beers bearing or promoted using the BLACKLANDS MALT mark that immediately identify the use of the BLACKLANDS mark as in connection to our business, even if they are confused as to the products Opposer produces.

62. [REDACTED]



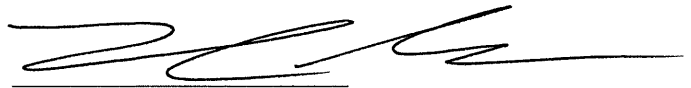
[REDACTED]

63. Consumers frequently inquire about whether Opposer will expand into brewing or distilling. Attached as Exhibit O is a true and correct copy of an October 6, 2014 tweet asking in response to a Tweet from Opposer, “when does the shop turn into Blacklands Malt & Brewery?”

64. If Applicant is permitted to obtain registration for the BLACKLAND DISTILLERY mark, not only do I expect its use of the mark to confuse consumers as to the source and/or affiliation of its products, but also, its use of the mark will greatly devalue the BLACKLANDS MALT brand and cause significant harm to Opposer by diluting the distinctiveness of Opposer’s BLACKLANDS MALT mark. Given that Opposer has successfully policed the usage of the BLACKLANDS MALT mark in the market place to date, if Applicant obtains registration for the BLACKLAND DISTILLERY mark it will provide Opposer with less recourse to protect the value of its brand against future infringers.

The signatory, being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements and the like may jeopardize the validity of this submission, declares that all the statements made of his own knowledge are true and all statements made on information and belief are believed to be true.

Dated: April 22, 2019



BRANDON ADE

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Testimonial Declaration of Brandon Ade has been served on the Applicant by forwarding said copy on April 22, 2019, via email to:

Scott Davison  
MUSICK DAVISON LLP  
12636 High Bluff Drive, Suite 400  
San Diego, California 92130  
scott@mdiplaw.net

This 22nd day of April, 2019.

/ Samantha Ade /  
\_\_\_\_\_

# **EXHIBIT A**

**TWILL/MESH SNAPBACK BLACK/WHITE**  
**CONFIDENTIAL**  
**RICHARDSON-112**

**FBLM\_0001818**



**TWILL/MESH SNAPBACK RED/WHITE/BLACK**  
**RICHARDSON-112**

**Small Texas flag added to left side**



TWILL/MESH SNAPBACK HEATHER  
GREY/BLACK RICHARDSON-112

FBLM\_0001819

Font is 'Yanone Kaffeesatz Bold'

Across back of hat hole embroidered



Small Texas flag added to left side



**CONFIDENTIAL**

**FBLM\_0001821**

<http://www.redkap.com/Products/Details/358072?product=Mens-Utility-Uniform-Shirt>



Red Kap ST62 Utility Uniform Shirt







FRONT



KEEP  
CALM  
AND  
MALT  
N



FRONT

NO  
PAIN  
NO  
GRAIN

FRONT

TAG



THE RYES  
OF TEXAS  
ARE UPON  
YOU



# **EXHIBIT B**

# Jester King Craft Brewery

[HOME](#) | [BEERS](#) | [BLOG](#) | [CONTACT](#) | [FAQ](#) | [SHOP](#) | [TASTING ROOM](#)

## First Delivery of Texas Malt from Blacklands

We are excited today to receive our first ever order of Texas malted barley and raw wheat! We received a delivery from [Blacklands Malt](#) located in Leander, Texas. Blacklands is the first ever micro-maltster in Texas. They produce brewing grains with barley and wheat grown in central Texas.

Making beer with a sense of place is of utmost importance to us and our beer making process. We use well water and naturally occurring wild yeast and bacteria captured from the air and land where our brewery is located to make beer with flavor and aroma derived from the Texas Hill Country. Adding barley and wheat grown and malted in central Texas to our beer making equation is something we're very excited about!



BLMALT000323



Malted barley from Blacklands Malt



Brandon Ade from Blacklands at Jester King making our first delivery

[« On Our Anniversary Party... Pellicle Photos »](#)

- [TWITTER](#)
- [FACEBOOK](#)
- [MAILING LIST](#)
- [CONTACT](#)

# **EXHIBIT C**

**of Eternity**  
**g Plains Lager**  
**ter King + Blacklands Malt**





JESTER KING  
- BREWERY -



AMBIENT TERRAIN : RUSTIC LAGER SERIES

8% ALC BY VOL 31 pint

ILLUSTRATION BY  
JAMES PAUL STRONG

BREWED & CANNED BY BURIAL BEER CO. BREWERY, INC.  
GOVERNMENT WARNING: (1) ACCORDING TO THE SURGEON GENERAL, EXCESSIVE  
CONSUMPTION OF ALCOHOL BEVERAGES CAN CAUSE LIVER DAMAGE AND  
RISK OF BIRTH DEFECTS (2) CONSUMPTION OF ALCOHOL BEVERAGES  
CAN IMPAIR YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY.





# **EXHIBIT D**

The hand and leaf do not live separate from the bodies from which they extend. We divide them by word, rope, and scythe but have found earth. The mind does not exist beyond the body it commands. We divide by thought, cord, and blade but again find earth. This land does not exist unattached to the next, nor this season to the next. Divided again by belief, chain, and spade. All is body of earth toiling in body of earth. All things sown, all returning earth.

Jester King is an authentic farmhouse brewery in the beautiful Texas Hill Country, on the outskirts of Austin. We brew what we like, drink what we want, and offer the rest to those who share our tastes.

WWW.JESTERKINGBREWERY.COM

IA-OR-VT-CT-MA-NH-NY-SC-REF MI-10C-REF

FL CASH REFUND OK+



# DICHOTOMOUS

ALC/VOL 5.2%

Ingredients: Unfiltered Hill Country Well Water, Texas Malted Barley from Blacklands Malt, Speltz, Malted Rye, Grilled Lemons, Hops, Smoked Paprika, Mixed Culture of Brewers Yeast, Native Yeast, and Native Bacteria

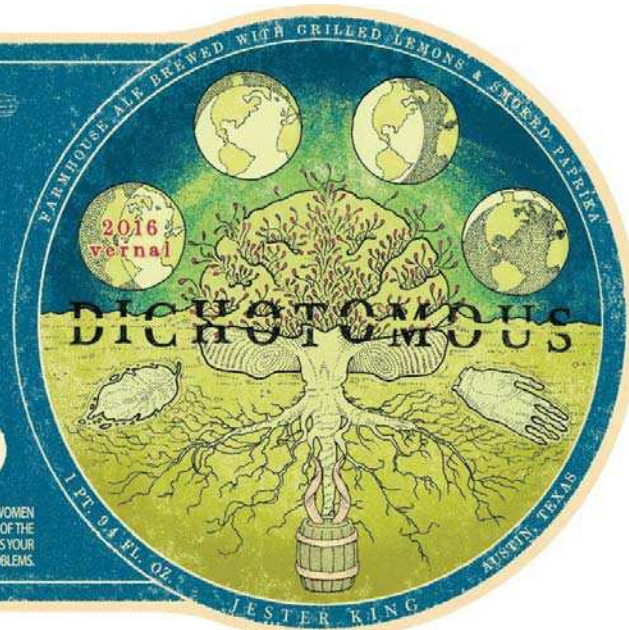
Suitable for Vegetarians and Vegans

Our beers are often inspired by the culinary world, and this is true of 2016 Vernal Dichotomous. A simple approach to preparing seafood - grilling a squeeze of lemon, and a dusting of smoked paprika - was the inspiration for this beer. Unfiltered, unpasteurized, and 100% naturally conditioned.

STORE COOL & UPRIGHT  
REFRIGERATE MIN 24 HOURS BEFORE OPENING

BREWED & BOTTLED IN AUSTIN, TEXAS BY  
JESTER KING BREWERY

GOVERNMENT WARNING: (1) ACCORDING TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS. (2) CONSUMPTION OF ALCOHOLIC BEVERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY, AND MAY CAUSE HEALTH PROBLEMS.



# CORRELATION

ALC / VOL 6.3%

INGREDIENTS: Texas Hill Country Well Water, Texas Malted Barley from Blacklands Malt, Texas Gala apples, Malted Wheat, Oats, Hops, Chamomile, Mixed Culture of Brewers Yeast and Native Yeast and Bacteria

NOTES: Correlation was brewed with Texas Malted barley from Blacklands Malt, English hops, and a small addition of chamomile. It was then fermented with crushed Texas Gala apples and allowed to mature in oak muscat barrels for over a year. Unfiltered, unpasteurized, and 100% naturally conditioned.

Brewed & Bottled in Austin, Texas by  
**JESTER KING BREWERY**

GOVERNMENT WARNING: (1) ACCORDING TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS. (2) CONSUMPTION OF ALCOHOLIC BEVERAGES INCREASES YOUR RISK OF ACCIDENTS AND INJURIES.

The best things in life aren't always extreme. A tired old cat, for example, can surprise you with the love it has to offer. Pizza, despite its ubiquity, rivals just about any food in terms of sheer satisfaction. And English cask ale, often mistaken as boring, provides endless intrigue when shared in the company of a friend. Excitement is in the details. In some instances it's even punctuated with an exclamation point.

Jester King is an authentic farmhouse brewery located in the beautiful Hill Country on the outskirts of Austin, Texas. We make farmhouse ales and spontaneously fermented beers tied to a time, place, and people.

www.jesterkingbrewery.com  
BATCH #1 - MAY 2018



Brewed & Bottled in Austin, Texas by  
JESTER KING BREWERY

IA-OR-VT-CT-MA-ME-NH-  
NY-SC-REF-NI-10< REF  
FL CASH REFUND OK+



GOVERNMENT WARNING: (1) ACCORDING TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS. (2) CONSUMPTION OF ALCOHOLIC BEVERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY, AND MAY CAUSE HEALTH PROBLEMS.

# MEOWZAH! ALC / VOL 4.6%

INGREDIENTS: Texas Hill Country Well Water, Texas Malted Barley from Blacklands Malt, Flaked Barley, Hops, Mixed Culture of Brewers Yeast and Native Yeast and Bacteria

NOTES: *Meowzah!* was brewed with our friends from The Masonry in Seattle. It celebrates their 5 year anniversary, our mutual love of pizza, cats, beer and most importantly the under-appreciated brewing styles of England. Unfiltered, unpasteurized, and 100% naturally conditioned.



Image Courtesy of Jester King / mybearbuzz.com

WHALES SHARE WITH ONE ANOTHER CAUTIOUS TALKS OF A PALE AND DUSTY BEARD. GREEDILY THEY LISTEN TO THE STORIES TOLD IN HETION, HOPING FOR A CHANCE TO SECURE THEMSELVES THE GLORY OF ITS DESTRUCTION. BLINDED BY GREED, THEY FAIL TO CONSIDER A GRIM POSSIBILITY: THE ENTITY THEY DEEM AS A TRICKSTER LURING THEM INTO A DANGEROUS PURSUIT IT WILL EVASIVE CAPTURE BY SHIFTING ITS DISGUISE INTO SOMETHING COMMONPLACE AND THEN FEED ON THEIR AGONY, HAVING USED CUNNING TO OBSOLETE BEFORE THEIR VERY EYES THAT WHICH THEY MOST DESIRE.

JESTER KING IS AN AUTHENTIC FARMHOUSE BREWERY LOCATED IN THE BEAUTIFUL TEXAS HILL COUNTRY ON THE OUTSKIRTS OF AUSTIN. WE MAKE FARMHOUSE ALES AND SPONTANEOUSLY FERMENTED BEERS TIED TO A TIME, PLACE, AND PEOPLE.

WWW.JESTERKINGBREWERY.COM  
 BATCH #1 - JULY 2017



BREWED & BOTTLED IN AUSTIN, TEXAS BY  
 JESTER KING BREWERY

14-08-KY-CX-NA-06-08  
 18-04-REF-00-104-REF  
 CASH REFUND



GOVERNMENT WARNING: (1) ALCOHOL TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS. (2) CONSUMPTION OF ALCOHOLIC BEVERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY AND MAY CAUSE HEALTH PROBLEMS.

## NO WHALEZ HERE

ALE/W/ 6.0%

INGREDIENTS: HILL COUNTRY WELL WATER, BLACKLANDS WHITE HOOP PILSENER, RAW MALTED AND FLAKED WHEAT, CARAFAN, ROLLED OATS, HOPS, DRIED TEXAS TAMERINES, TEXAS CORIANDER, TEXAS LAVENDER, MIXED CULTURE OF BREWERS YEAST AND NATIVE YEAST AND BACTERIA

NOTES: NO WHALEZ HERE IS A SIMPLE FARMHOUSE TAKE ON CLASSIC WITBIER. A WHEAT DOMINANT CRUST WAS BREWED WITH ADDITIONS OF TEXAS GROWN CORIANDER, HOUSE-BREWED TEXAS TAMERINES, AND LAVENDER HARVESTED FROM OUR PROPERTY IN THE HILL COUNTRY. UNFILTERED, UNPASTEURIZED, AND 100% BOTTLE-CONDITIONED.



Image Courtesy of Jester King /mybeerbuzz.com

CURRENCIES HAVE EXISTED CONSISTING ENTIRELY OF SEASHELLS. LIFE AND LIMB HAS BEEN RISKED TO ACCESS EXOTIC FRUITS AND RARE SEA CREATURES FOR COMMERCE AND TRADE. WITH ALMOST TWO THIRDS OF THE EARTH'S POPULATION IN CLOSE PROXIMITY TO A COAST AND SUCH STRONG VALUE PLACED ON ITS OFFERINGS, ONE MUST ASK THE QUESTION, "WHY THE HELL AM I NOT AT THE BEACH?"

JESTER KING IS AN AUTHENTIC FARMHOUSE BREWERY LOCATED IN THE BEAUTIFUL TEXAS HILL COUNTRY ON THE OUTSKIRTS OF AUSTIN, TEXAS. WE MAKE FARMHOUSE ALES AND SPONTANEOUSLY FERMENTED BEERS TIED TO A TIME, PLACE, AND PEOPLE.

WWW.JESTERKINGBREWERY.COM  
BATCH #1 - 12.05.2016

IA-OR-VT-CT-MA-ME-NH-  
NY-SC-REF-MI-10C-REF  
CA CASH REFUND OK+



# Rare Corals

ALC/VOL: 5.3%

INGREDIENTS: TEXAS HILL COUNTRY WELL WATER, TEXAS MALTED BARLEY FROM BLACKLANDS MALT, RAW WHEAT, ROLLED OATS, CANTALOUPE, GUAVA, BANANA, STRAWBERRY, TOASTED COCONUT, CHAMOMILE, HOPS, MIXED CULTURE OF BREWERS YEAST AND NATIVE YEAST AND BACTERIA

NOTES: RARE CORALS WAS CREATED IN AGREEMENT WITH THE FREQUENCIES, BRIGHT COLORS, AND LAYERED TEXTURES THAT SURROUND THE UNDULATING BODIES OF CERTAIN TROPICAL ORGANISMS. UNFILTERED, UNPASTEURIZED, AND 100% BOTTLE CONDITIONED.

BREWED & BOTTLED IN AUSTIN, TEXAS BY  
JESTER KING BREWERY

GOVERNMENT WARNING: (1) ACCORDING TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS. (2) CONSUMPTION OF ALCOHOLIC BEVERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY, AND MAY CAUSE HEALTH PROBLEMS.

1 PT. 9.4 FL. OZ.

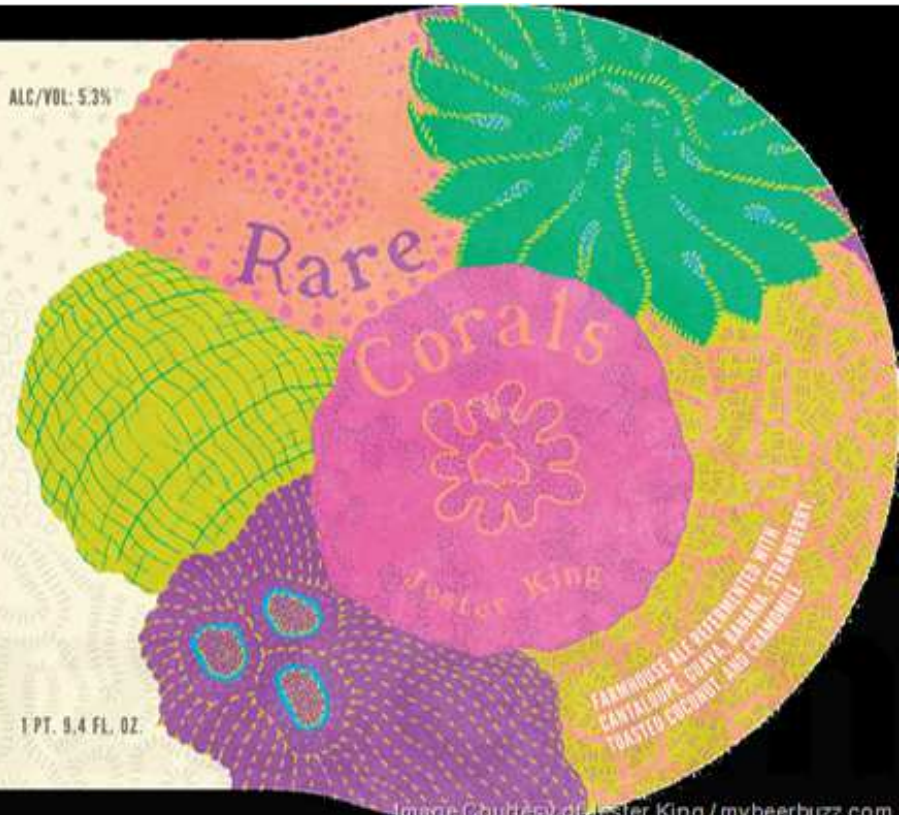


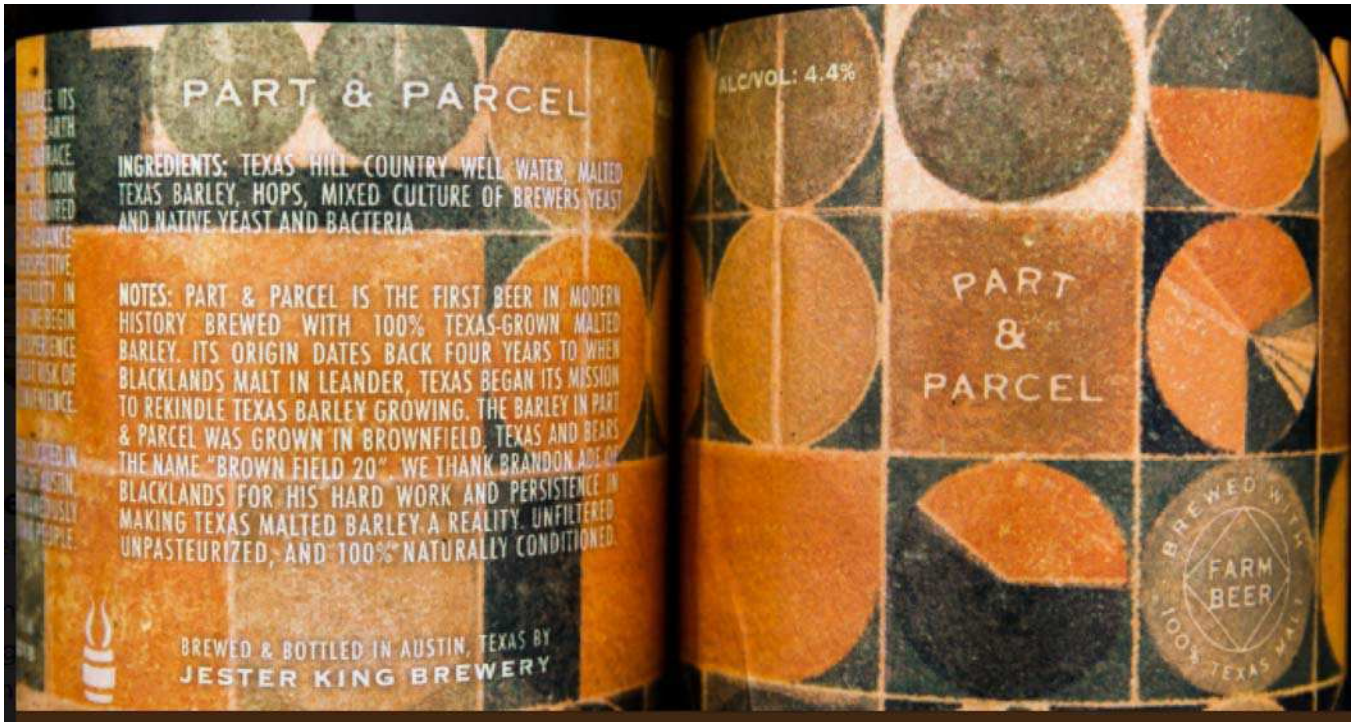
Image Courtesy of Jester King / mybeerbuzz.com



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# **EXHIBIT E**





# PART & PARCEL

ALC/VOL: 4.4%

INGREDIENTS: TEXAS HILL COUNTRY WELL WATER, MALTED TEXAS BARLEY, HOPS, MIXED CULTURE OF BREWERS YEAST AND NATIVE YEAST AND BACTERIA

NOTES: PART & PARCEL IS THE FIRST BEER IN MODERN HISTORY BREWED WITH 100% TEXAS-GROWN MALTED BARLEY. ITS ORIGIN DATES BACK FOUR YEARS TO WHEN BLACKLANDS MALT IN LEANDER, TEXAS BEGAN ITS MISSION TO REKINDLE TEXAS BARLEY GROWING. THE BARLEY IN PART & PARCEL WAS GROWN IN BROWNFIELD, TEXAS AND BEARS THE NAME "BROWN FIELD 20". WE THANK BRANDON ADE OF BLACKLANDS FOR HIS HARD WORK AND PERSISTENCE IN MAKING TEXAS MALTED BARLEY A REALITY. UNFILTERED, UNPASTEURIZED, AND 100% NATURALLY CONDITIONED.

# PART & PARCEL



BREWED & BOTTLED IN AUSTIN, TEXAS BY  
JESTER KING BREWERY



# **EXHIBIT F**



**ARCHETYPE HISTORICAL IPA**  
**A BEER 300 YEARS IN THE MAKING**

BLMAL1000548

In the early 1700's, when British Pale Ales first landed on Indian shores, the brewing world changed forever.

Over the next 300 years the idea of what constitutes an IPA evolved drastically, incorporating changes to its malt composition, alcohol content and hopping rates. It wasn't until 1835 that the pale ales shipped to India were first termed IPAs.

The third beer in our Inner Circle Series pays homage to the India Pale Ale by emulating the Burton-on-Trent IPA. Every effort was made to adhere to historical accuracy, starting with the malt.

Working closely with Blacklands Malt, we recreated the Burton White Malt by kilning at exceptionally low temperatures, maintaining moisture content and keeping down color development. Using only East Kent Golding, we mirrored the hopping schedule and rates of the brewers that invented the style.

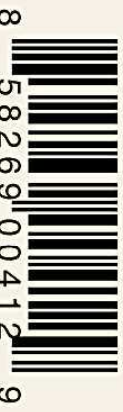
The ale then spent the next four months in oak barrels, emulating the journey to India. To ensure historical accuracy, each barrel was inoculated with Brettanomyces to recreate its natural introduction from years of barrel stave reuse and reconstruction on that trade route.

When you open a bottle of Archetype Historical IPA, you're reliving a part of history and savoring every second of it...

Read more at [circlebrewing.com](http://circlebrewing.com).

**GOVERNMENT WARNING**

ACCORDING TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS. CONSUMPTION OF ALCOHOLIC BEVERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY AND MAY CAUSE HEALTH PROBLEMS.



# **EXHIBIT G**



# **EXHIBIT H**

★ALTEXAS

5.0% 36 100% Blacklands Texas Malt  
amber caramel clean

SLOWRIDE PALE ALE 4.8% 35 AMERICAN MUSCLE BEER  
DRY-HOPPED CITRUSY

METAMODERN SESSION IPA 4.5% 45 TROPICAL TRANSCENDENT  
CLEAN

BIRU BEAR JAPANESE LAGER  
RYRICE LAGER WITH 4.8%  
SORACHI ACE HOPS 28 IBU

2.13 PALE ALE  
ROCK OUT WHEN YOU  
CLOCK OUT  
4% 32 dry-hopped, crystal blonde pale ale

# **EXHIBIT I**





hops strum juicy and sweet aromas with headline notes of passion fruit, raspberries, pineapple, and citrus. The straight-up strain is Oskar Blues IPA.

6.43% ABV, 70 IBUS



**Texas REEB Rye'd** - Saddle up for Austin's first Texas-only specialty beer. Brewed with rye malt, local Blacklands malt and mosaic hops this beer blazes a flavor trail for yer dusty mouth valley.

It's a lush mahogany-hued brew with an appearance like a pack of wild brown stallions.

Notes of berry, grapefruit, citrus, dark fruit, and caramelized sugar combine with the spiciness of the rye to add complexity to this well-balanced beer.

You'll feel at home on the range in the Tasty Weasel where this is only available. Fill yer hands!

7.0% ABV, 65 IBUS

FBLM\_0000600

BLMALT000576

Old Club Scotch Ale - A brobdingnagia

# **EXHIBIT J**

## Manor's Banner Distilling bottles up a wheat whiskey

0

Arianna Auber

Updated November 10, 2015 Filed in spirits.

Two locals launched Banner Distilling a few years in a small building in rural Manor with the goal of bottling up a Texas-made wheat whiskey. But it was only earlier this year that their dream was realized.

Although Banner co-founders Logan Simpson and Anthony Jimenez [released a vodka first](#) — because an unaged spirit is an easier way to bring in revenue early — they've finally gotten the whiskey on the market and have already seen it become award-winning.

Banner Distilling's wheat whiskey recently took a silver medal at the New York International Spirits Competition. The spirit also earned a bronze medal at the San Francisco World Spirits Competition in the spring. They're two gratifying wins for the Banner duo whose operation is so small that the whiskey is released at less than 150 bottles at a time, after aging five gallons at a time in American white oak barrels.

Simpson and Jimenez decided to play with wheat as the dominant grain in the whiskey, rather than the more commonly used corn or rye, because of their desire to keep ingredients as local as possible. Their distillery is located in an area where farmers told them, early on, that they'd be willing to grow whatever Banner needs.



*Contributed by Banner Distilling Co. Banner Wheat Whiskey is aged in American white oak barrels and released in very limited batches.*

ADVERTISING



“There are wheat fields all over the place here, so it just makes sense for us to do it,” Jimenez said during a visit to the distillery last year.

In addition to winter wheat grown in nearby New Sweden, the 92-proof whiskey also features malted barley from Leander’s Blacklands Malt and rainwater harvested from Smithville’s Texas Rain. “We literally use Texas air, sun, soil and rain to make the whiskey,” Simpson said in a recent email. “We like to say it has Texas in the bottle, not just on it.”

The result is a complex aged spirit with notes of toasted cherry and black pepper. The wheat, Jimenez said in an email, is a flavor “impossible to mask. It’s (akin) to sipping on a glass of freshly baked bread with a sweet, peppery finish,” shining through and breathing new life into classic cocktails like Old Fashioneds or Manhattans.

Simpson noted that it’s only been getting better with each batch. “We anticipate gold next year,” he said.

For more information, visit [www.bannerdistilling.com](http://www.bannerdistilling.com).

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VIEW COMMENTS 0

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# **EXHIBIT K**



**REAL ALE**  
BREWING CO

**PROUD PARTNERS**  
of Blacklands Malt,  
the first truly local  
malthouse in  
Texas.

**BLACKLANDS**  
MALT

The beer you're  
about to enjoy was  
brewed in Blanco,  
Texas using  
locally-malted  
barley.

TX 96

**REAL ALE**  
BREWING CO

SMALL BATCH  
LIMITED RELEASE

6 x 12 OZ  
BOTTLES

**BREWERS' CUT**  
PROJECT NO. **23**  
**ESB**

IBU	SR PLATO
45	13.5

London calls with this  
English inspired ale.

UNFILTERED | ONLY IN TEXAS | UNPASTEURIZED

# **EXHIBIT L**



**MALTS**

Capture unique flavors with local Texas malt

**MALTING 101**

Water, time, fire, and why we need malt

**ABOUT US**

Our journey to answer a simple question

**PRESS**

Our story through time

**PURCHASE**

Bring the harvest home

**CUSTOMERS**

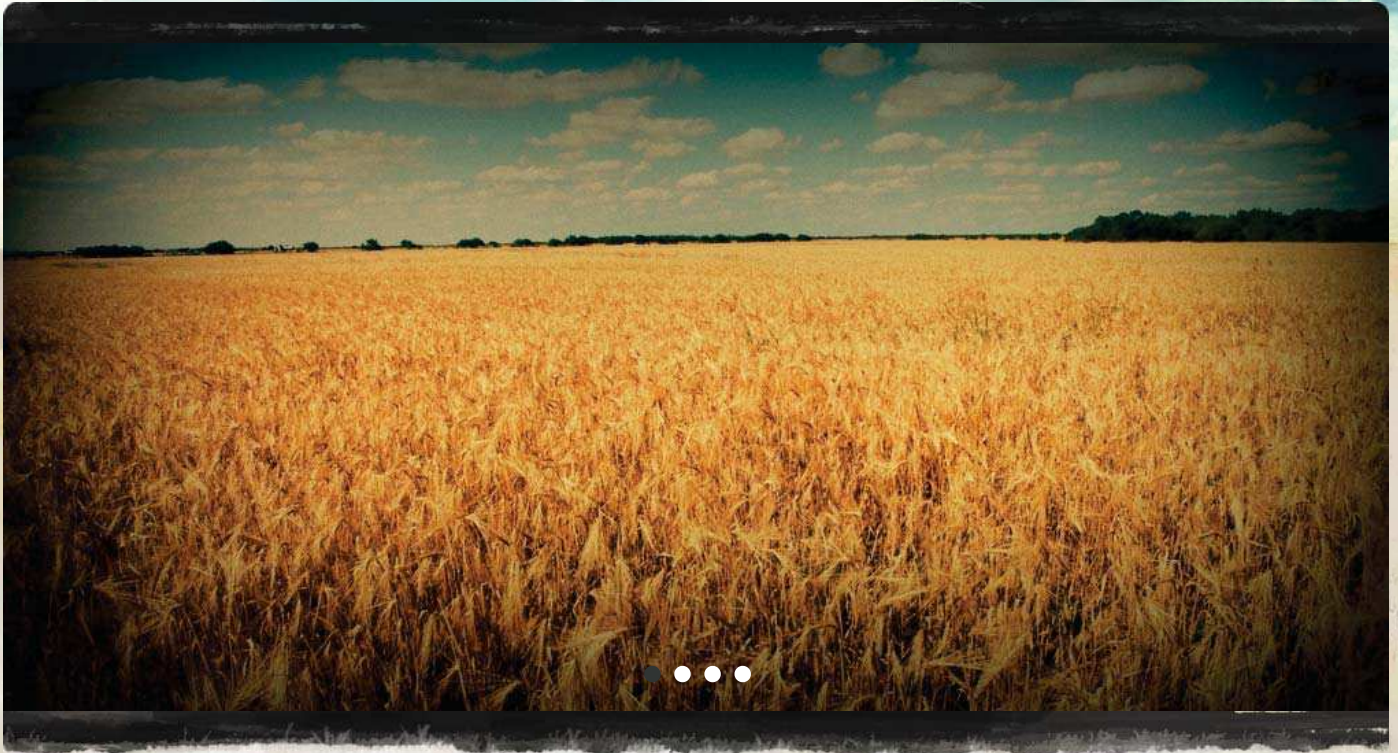
Our friends

**CONNECT**

Find our malthouse and drop in for a visit

**CONSULTING**

Professional malting services for hire



*an authentic story of Texas manufacturing and agriculture since 2013*



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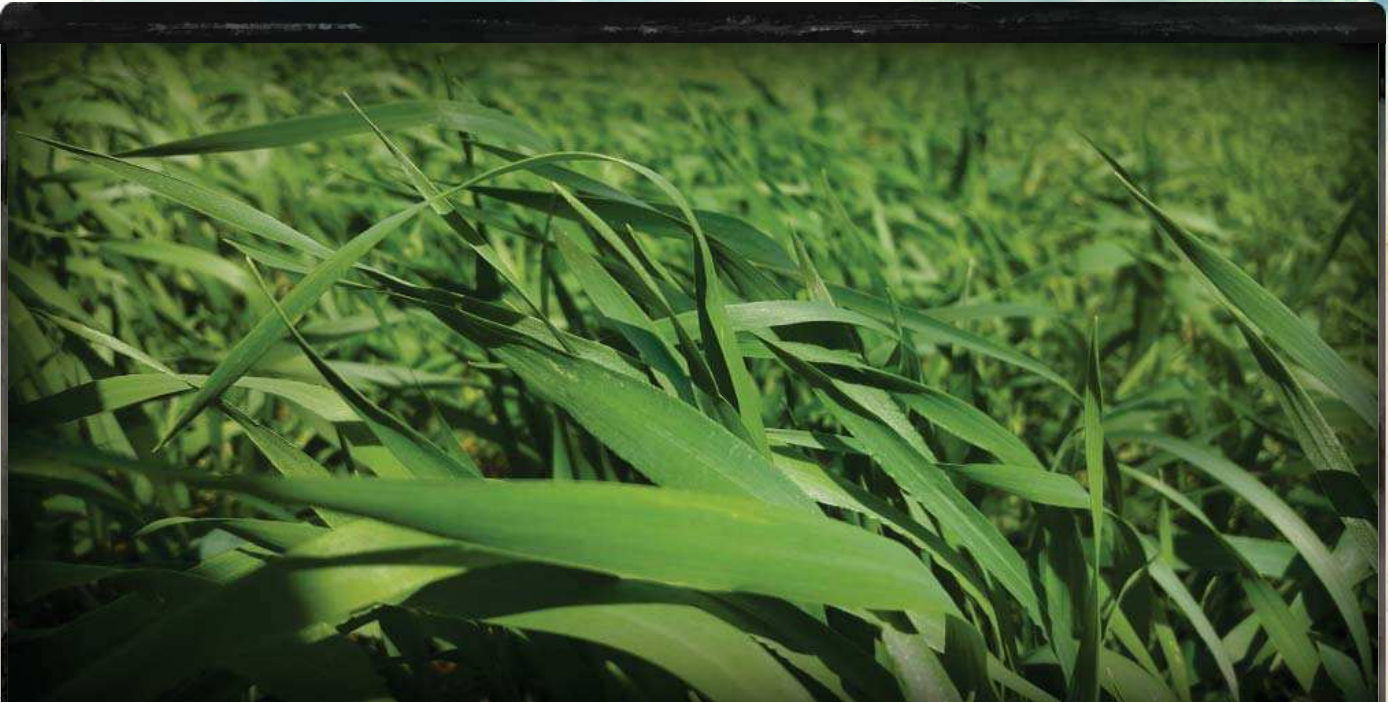
Find our malthouse and drop in for a visit

**PRESS**

Our story through time

**CONSULTING**

Professional malting services for hire

**Blacklands Malt is the first malthouse in Texas in modern history.**

Prior to our founding in 2012, no barley, wheat, or rye was grown and malted in Texas for use in beer and spirits. Since that time our founder has been the driving force behind the revitalization of Texas-grown malting barley statewide, providing brewers with access to local malt for the first time in Texas history. We are happy to see that the industry continues to grow in the trail we have blazed. Our privately funded research with Texas A&M started in 2012 and has grown into a much larger statewide effort with public access to the data. Our hope is that this data **empowers farmers** to pursue barley production as a viable and rewarding crop alternative, in turn creating a robust supply chain for Texas-grown barley.

**Purpose**

To **enrich our community through local manufacturing and authentic products** and **connect people to their land through agriculture and alcoholic beverages.**

**Values**

**Hard Work** We do not shy from self sacrifice to get our work done.

**Attention to Details** We achieve unequalled excellence and consistency by obsessing over the details.

**Dedication** We are a loyal team that relies on every member to perform their work reliably and with commitment.

**Integrity** We do "The Right Thing" by being honest, transparent, and open with our team, customers, and community about our work.

**Professionalism** We are conscientious, thorough, and approach work with respect.

*Where does malt come from?*

## That single question, and the journey to answer it, was the genesis of Blacklands Malt.

Back in February 2012 Brandon Ade woke up with an idea. Actually, he woke up with a funny word in his head "Wunderbarley" (an amalgamation of the German word for wonderful and barley). Not before long the question finally struck him: does barley grow in Texas?

There has been so much focus on the "beer side" of the craft beer industry since the beginning that few have given any thought to the supply chain side of beer. And who's to blame? Craft beer is driven by passionate folks creating incredible experiences through liquids while at the same time revitalizing manufacturing across the country.

Some research of the USDA ARS database in 2012 quickly answered the question: *no cereal grains (barley, wheat, oats, rye) of any sort were grown and malted here in Texas for brewing.* Why weren't malting grains grown locally in Texas? Why do brewers ship malt thousands of miles overseas? Who even makes malt and where do they malt it?!

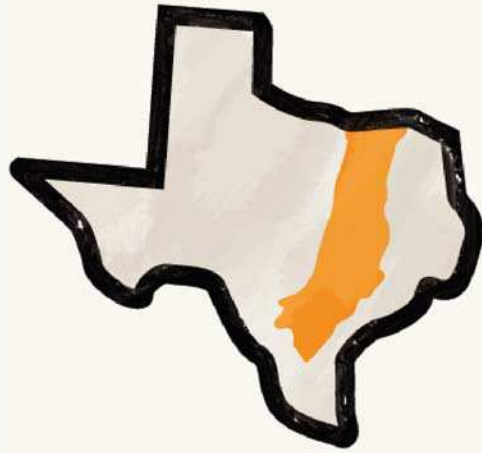


Blacklands Malt has partnered with the Texas A&M Agrilife Extension Service in an ongoing effort to isolate and identify the best barley varieties to grow here in Texas.

And so began what quickly became our obsession with answering these questions. That obsession with finding out the "truth" about malt would quickly spiral into what has now become our life's work. Three months after that fateful Thursday morning in February 2012, when "Wunderbarley" popped into Brandon's head, we founded Blacklands Malt, LLC with the intention of changing the landscape of local malt production. From starting out with Texas having no ties to barley in 2012, to discovering farmers in West Texas growing barley for feed, to collaborating with Texas A&M University on barley trials, and finally realizing our dream of 100% Texas grown barley malt in 2016, it has certainly been an amazing roller coaster ride of discoveries and learning.

Our mission is to take the good sense of sustainable local food production and bring agricultural back to a local level. Why ship malt overseas, adding to transportation costs and environmental impact, when barley can be grown and malted right here in Texas? 150 years ago every brewery malted their own locally sourced grains. In the years since, the drive to maximize profits, increase yields, and squeeze every penny out of crops has given way to massive conglomerations of grain producers and maltsters who have taken away the local production of foodstuffs and disconnected consumers from their natural ties with agriculture and food sources.

And so our crazy journey continues, to keep serving our local communities with malt from our small malthouse. Join us as we enjoy beer, spirits, and foods made from 100% Texas-grown malt. We hope you will stick around to learn more about malting, get energized about local food production, and support our work to provide local Texas products. So, who's thirsty?



Our name was inspired by the Blackland Prairies, a Texas eco-region extending from Dallas to San Antonio [http://en.wikipedia.org/wiki/Texas\\_blackland\\_prairies](http://en.wikipedia.org/wiki/Texas_blackland_prairies)



Blacklands Malt is owned and operated by Brandon and Samantha Ade, local Austinites, homebrewers, and craft beer junkies since 2005. You can find them and their dog Riker living in Northwest Austin.



Brandon having some drinks with the gentlemen of CMBTC in Winnipeg Canada, where he was trained in malting



*an authentic story of Texas manufacturing and agriculture since 2013*



©2019 Blacklands Malt, LLC



**MALTS**

Capture unique flavors with local Texas malt

**MALTING 101**

Water, time, fire, and why we need malt

**PURCHASE**

Bring the harvest home

**CUSTOMERS**

Our friends

**ABOUT US**

Our journey to answer a simple question

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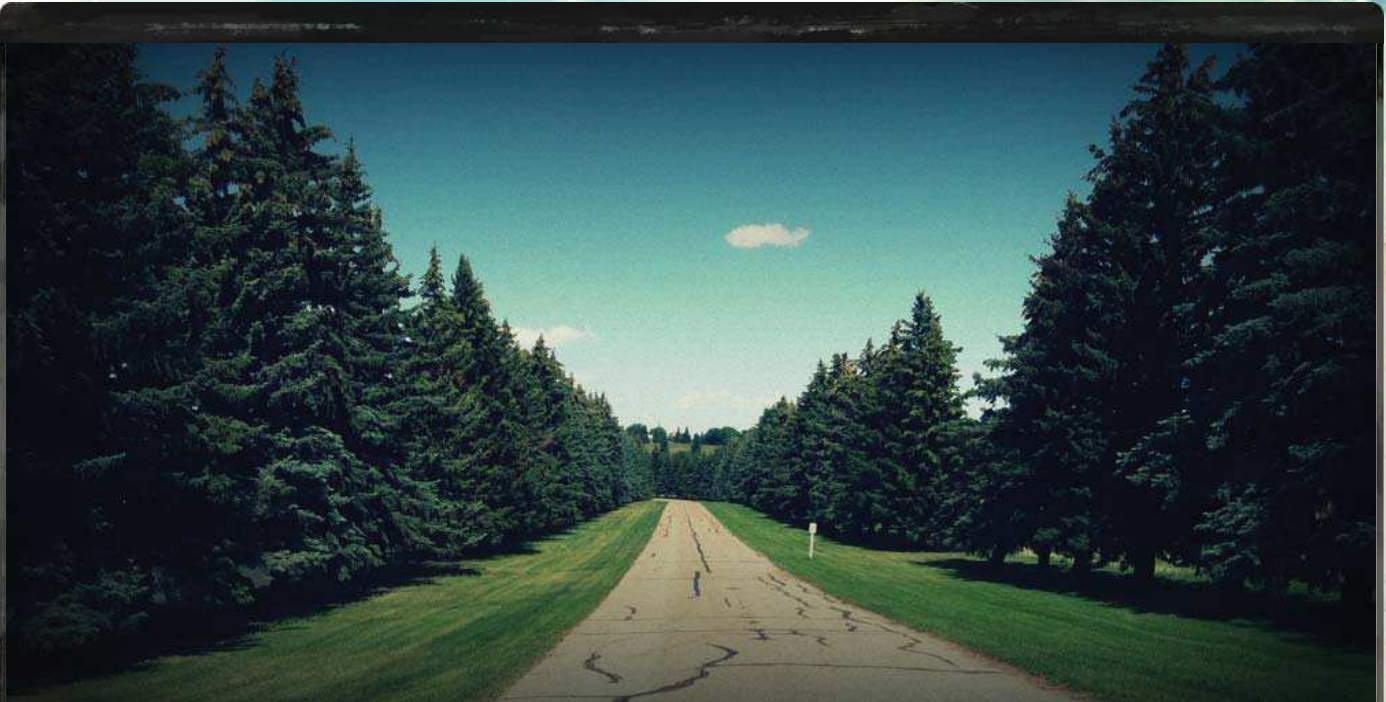
Find our malthouse and drop in for a visit

**PRESS**

Our story through time

**CONSULTING**

Professional malting services for hire



You can find our malthouse located in Leander Texas, 20 minutes Northwest of Austin, down Old Farm to Market 2243 and south on Bagdad Road. If you would like to arrange a visit or purchase malt in person please contact us to make an appointment.

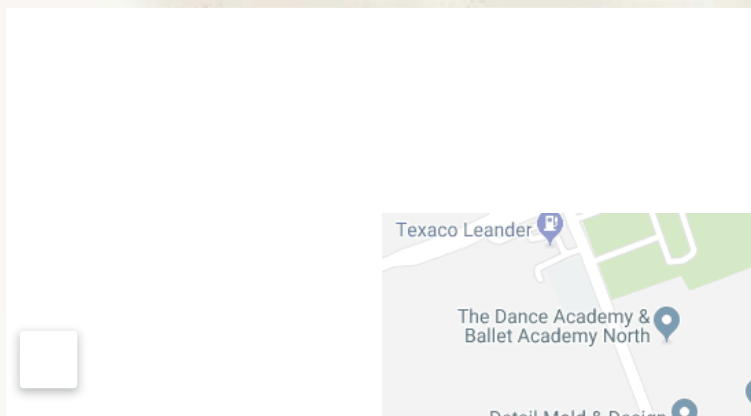
**Telephone:**  
512-944-3259

**Email | Mailing List:**

If you would like to receive updates about malt availability and when new malt varieties are scheduled to release you are welcome to join our mailing list by simply sending Brandon an email.  
[brandon@blacklandsmalt.com](mailto:brandon@blacklandsmalt.com)

**Online:**

[Facebook](#)  
[Instagram](#)  
[Twitter](#)



[View Larger Map](#)

**Physical address:**

190 N. Bagdad Rd. Bld B Suite 300 Leander, TX 78641

**Public transit:**

We are located 1.3 miles due West from the MetroRail station in Leander, down FM 2243 and south on Bagdad Road. It is a 10 minute bike ride or 3 minutes by car.

*an authentic story of Texas manufacturing and agriculture since 2013*



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### Starting a malthouse is easy, it's running a malthouse that's hard.

The craft malt industry is maturing. Led initially by pioneering visionaries with limited budget and endless passion, the industry is now witnessing new waves of well-financed operations that have proven business cases to follow. What remains the same between these two periods is a lack of practical malting knowledge from experienced staff willing to share their expertise.

As an industry that has operated behind the scenes for many decades there are few well-known resources available for on-site consultation. As a pioneer of the modern craft malt movement Brandon Ade (Founder and Managing Partner) also understands how closely guarded most malting knowledge is held. In response, he has quietly consulted for small and large operations alike since 2015. Building on his openness and willingness to share throughout the years, he now offers his skill set, experience, and time to those in need of professional (but mostly practical) malting services.

Focused primarily on production troubleshooting, start-up, and practical malthouse challenges, he provides a variety of **in-house (travel to us)** and **on-site (travel to you)** services for both start-ups and established operations.



**prac-ti-cal**  
/praktək(ə)l/ adjective

1. of or concerned with the actual doing or use of something rather than with theory and ideas.  
"There are two obvious practical applications of the research."  
anonymous empirical, evidence-based, actual, active, applied, heuristic, experiential, evidence-based, practical, experiential

### Pricing, availability, and to schedule an initial free consultation:

**brandon@blacklandsmalt.com**

**512-944-3259**

### Credentials

**2017-Present** Board of Directors, Craft Maltsters Guild

**2012** Canadian Malting Barley Technical Centre

**2005 B.S.** Computer Engineering, Purdue University

**Member** American Malting Barley Association

**Member** Texas Craft Brewers Guild

**Member** Brewers Association

Brandon built his first malthouse from the ground up in 2013 and followed it with a second facility in 2017. Having been directly involved in day-to-day production management since 2013, he has acquired a vast skill set when it comes to making a malthouse work.

With real world experience in both pneumatic forced air "bin malting" and traditional floor malting, Brandon has unique experience in overcoming numerous challenges with both systems and has demonstrated pragmatic solutions. Relying heavily on his engineering background, Brandon prefers to demystify malthouse challenges with data driven decision making.

### List of Services

**Barley Selection Analysis**

**Malt Recipe Development**

**Floorplan and Production Flow Layout**

**Equipment Selection and Layout**

**Equipment Programming and Controls**

**Malt/Grain Storage and Management**

**First Batch Production Start-up**

**Pneumatic Systems Operation and Troubleshooting**

**Floor Malting Techniques, Tools, and Practices**

**In-house Floor Malt Training**

**Process Adjustments Based on Finished Malt Analysis**

**Staff and Equipment Operator Training**

**Production Throughput Estimates**

**Production Staff Responsibilities**

**Batch Scheduling (Steep, Germ, Kiln)**  
**Pest Control Practices**

**Quality and Safety Audits**  
**Facility Maintenance and Sanitation**

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**MALTS**

Capture unique flavors with local Texas malt

**MALTING 101**

Water, time, fire, and why we need malt

**ABOUT US**

Our journey to answer a simple question

**PRESS**

Our story through time

**PURCHASE**

Bring the harvest home

**CUSTOMERS**

Our friends

**CONNECT**

Find our malthouse and drop in for a visit

**CONSULTING**

Professional malting services for hire

Over the years we've been fortunate enough to have folks support us and our work. Below you will find those we have shaken hands with in the last 6 months. We encourage you to enjoy their products which indirectly supports Texas farmers, families, and our small malthouse.



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Malting is the art of naturally developing enzymes within the kernel of a cereal grain, like barley, and then quickly halting the growth process. Why is malting necessary? Well, raw grain lacks the natural enzymes necessary to convert starches to sugar, which is necessary for certain uses of the grain such as brewing beer.

After harvest, barley kernels start out with a densely packed matrix of high molecular weight starch granules, known as the endosperm. In the normal life process, if the kernel were planted in the ground and provided enough water, the embryo at the end of the kernel would signal growth and release enzymes that begin to break down the starchy endosperm. The starch is then converted to simple sugars that the plant uses as food in order to sprout roots, develop a stem, and grow.



Remember the 3 'E's - embryo, endosperm, and enzymes



Raw seed is the only ingredient in malt



A happy kernel sprouts into a happy plant

In malting, we desire the same start of this natural life process whereby the enzymes necessary to break down the starch are fully developed. However, if the kernel's growth were not halted then all of the simple sugars that were converted from starch would be consumed by the plant. That would leave nothing left for a brewer to "extract" in order to make sugary wort.

Therefore, maltsters allow the development of the plant to a certain desirable point, where all the enzymes necessary to convert starch to simple sugars are developed, and then we halt the growth process by quickly drying the kernel. At the drying stage the nearly finished malt can be kilned, "stewed", roasted, smoked, or finished in a number of ways to produce an endless variety of possible malts, each with a different flavor profile.



Water



Time



Fire

The three steps of malting are actually quite simple: steeping (water), germination (time), and kilning (fire).

We start by steeping raw grain in water to allow the embryo to soak in moisture. At around 30% moisture content the embryo is sufficiently pleased with the water availability and triggers the growth process as the kernel continues to take in water.

The next step of germination is giving the kernel time to develop the natural enzymes for starch conversion and protein degradation. Also during this stage the "green malt" sprouts small rootlets that must be removed after drying. While it sounds simple, germination is the most important step of the malting process. Without proper enzyme development we would have a starchy food source with no tools to break it in to edible sugars!

Finally, to prevent further growth we fire up the kiln and quickly dry the green malt down to around 5% moisture content. The kiln is also where special colors and flavors are developed depending on the amount of heat. After kilning the malt is cooled down, packaged, and ready to go into our favorite beers, spirits, and baked goods.

The science of malting is in understanding the complex bio-chemical changes taking place to develop beneficial enzymes and the art of malting is figuring out how to do this consistently with an ever changing, living, organism!



A perfectly steeped barley kernel proudly displaying its white "chit"



A handful of green malt with a tangle of rootlets



Intense flavors and colors can be developed in the kiln

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## True™ Texas Pilsner

### Available Now!

For traditionalists and decoction experts we are proud to offer this true-to-form floor-malted Pilsner malt. Pushing the boundaries of under-modification, this malt demands respect in the brewhouse. Purposefully under-modified to obtain the lowest possible color and give true purpose to decoction mashing. It must be approached with a deep understanding of malt and mastery of how to unlock it's potential. If you can't read a malt CoA then this malt is not for you! It makes a great base for any Pilsner, lager, or light colored beer.

**Perfect for decoction and only decoction!**

**Color:** 1.5 SRM

**Moisture:** 5.1%

**Protein:** 11%

**DP:** 142

**AA:** 66

**FG:** 83%

**BG:** 424

**Usage:** 0-100%





### White Horn™ Texas Pilsner

**Available Now!**

White Horn Texas Pilsner is our original Pilsner recipe. Produced from under-modified two-rowed barley it carries a raw grain and grassy flavor. It produces a wort with a clean malt backbone, mild sweetness, and earthy grass notes. It is comparable to a European Pilsner malt and its potential is best unlocked with a stepped mash. It makes a great base for any Pilsner, lager, or light colored beer.

**Not recommended for single infusion!**

**Color:** 1.6-1.8 SRM

**Moisture:** 5.2%

**Protein:** 11%

**DP:** 160

**AA:** 78

**FG:** 83%

**Usage:** 0-100%



### Silver Star™ Texas 2 Row

**Available Now!**

Silver Star Texas 2 Row was developed to provide a high-enzyme, low color option for single infusion mashes where use of our under-modified Pilsner malts are not possible. It performs well in any mash (single infusion, stepped, or decoction). It produces a clean, neutral wort with pronounced grain sweetness. It is a great enzymatic malt for quick conversion to be used as a base for any recipe, especially suited for light lagers, pilsners, distillation, adjunct brewing, and pre-prohibition styles.

**Perfect for single infusion and distillation!**

**Color:** 2.0-2.2 SRM

**Moisture:** 4.9%

**Protein:** 11%

**DP:** 148

**AA:** 80

**FG:** 82%

**Usage:** 0-100%



### Red Winter™ Texas Wheat

#### Available Now!

This Texas-grown high protein hard red winter wheat malt is often used for head formation and retention or to enhance diastatic activity. It is carefully kilned at low temperatures to ensure maximum survivability of the enzyme package. It produces a pale sweet wort with flavors of cereal (Grape-Nuts) and very distinct earthy notes unique to Texas.

Perfect for Wheat beers and building body!

**Color:** 2.0-2.3 SRM

**Moisture:** 5.0%

**Protein:** 15%

**DP:** 170

**AA:** 35

**FG:** 80%

**Usage:** 0-80%

### Pale Moon™ Texas Pale Ale

#### Available Now!

The malt that started it all! Pale Moon Texas Pale Ale was developed to provide more depth in flavor and color (due to increased kiln time/temperature) for SMaSH ales yet retain full enzymatic performance for self-conversion. It produces a clear, malty wort with pronounced peanut butter biscuit notes, moderate cereal sweetness, and a touch of breadly earthiness. It is a **rich** enzymatic malt suitable as a base for any style, especially IPAs, APAs, and English ales.

Perfect for IPAs, Pales, and Bitters!

**Color:** 3.8-4.0 SRM

**Moisture:** 3.8%

**Protein:** 10.8%

**DP:** 104

**AA:** 73

**FG:** 83%

**Usage:** 0-100%



## Amber Wave™ Texas Amber

### Available Now!

Amber Wave Texas Amber is a very unique specialty malt, unlike anything else. It is produced from partially stewed over-modified, high-nitrogen two-rowed barley. This unique stewing process produces a **self-converting** ruby-red wort with flavors of sweet candy-apple, amazing mouthfeel and body, strong honey graham cracker aroma, and notes of cinnamon. This malt really shines in ambers, Vienna lagers, browns, or styles looking to increase color and flavor complexity in lighter beers.

**Color:** 10 SRM  
**Moisture:** 4.6%  
**Protein:** 13.9%  
**DP:** 95  
**AA:** 36  
**FG:** 77%  
**Usage:** 0-100%

Perfect for Ambers and Vienna Lagers!



## Cold Rock™ 20 Texas Crystal

### Available Now!

Cold Rock 20 Texas Crystal is our 1st release of a fully glassy crystallized malt! It is produced from a proprietary flat-trap steam technique that liquefies the starch into sugar within the kernel. This unique steam process produces a beautiful caramel wort with flavors of sweet toasted marshmallow, heavy mouthfeel and body, caramelized sugar aroma, and notes of toast.

**Color:** 20 SRM  
**Moisture:** 4.5%  
**FG:** 75%  
**Usage:** 0-50%

Perfect for color and body development!



## Brown Field™ Texas Munich

### Available Now!

**Color:** 5/15/25/45 SRM  
**Moisture:** 4.1%

Our Brown Field Texas Munich malts are offered in a range from light (5 SRM) to dark (40 SRM).

These high-dried melanoidin-rich Munich malts are produced from Texas grown, high-nitrogen two-rowed barley. They produce rich malt character from light toast to dark bitter toast malt character. Notes of toast, chocolate, caramel and coffee. They are well suited for dark, rich, aromatic full-bodied beers such as ambers, Märzens, bocks, festival beer, and in low quantities to give body, haze stability, color, and fuller flavor in pale beers and lagers.

**Protein:** 14%

**FG:** 77%

**Usage:** 0-50%

**Perfect for Browns and Märzens!**



### Black Coal™ Smoked Series

**Call to Order!**

We offer all of our malts smoked with the wood of your choice! Our malt is cold smoked, to retain full enzyme activity as a base malt, and lock in an incredible pungent smoked character. Many choices of wood and malt are available to create unique combinations.

**Wood Characters:**

**Mesquite:** Texas Brisket

**Oak:** Classic Campfire

**Birch:** Pine & Resin

**Cherry:** Sweet & Spicy

**Apple:** Sweet & Clean

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## Our story grows with each harvest

### 2018

- December 2018** [Ambient Terrain - Burial Beer / Jester King Brewery / Blacklands Malt, YouTube](#)
- December 2018** [Oddwood Ales is Bringing Back the Odd Ale, Austin Monthly](#)
- October 2018** [Owner of Texas' first malt house talks about leaving tech for shovels, San Antonio Express-News](#)
- September 2018** [Willie Nelson adds \\$5,000 grant to Austin Food & Wine Alliance giveaway, Statesman](#)
- September 2018** [Oskar Blues Begin Brewing Flagship Dale's Pale Ale with Blacklands Malt, Brewbound](#)
- August 2018** [Vista Brewing Announces Barrel Program, Brewbound](#)
- August 2018** [2018 Jester King 分桃 \(FĒN TÁO\), Jester King Blog](#)
- July 2018** [New Texas Barley Crop Arrives!, Jester King Blog](#)
- June 2018** [Blacklands Malt: OG Texas Maltsters & Longtime Friends, Black Star Co-op](#)
- June 2018** [Beyond the Plains: Growing Beer with Craft Malting, Craft by Under My Host](#)
- April 2018** [Beer Release: SMash SMaSH Sour IPA, Austin Monthly](#)
- March 2018** [Inside Beer: Craft Maltsters Spur Roots Revival, spiritedbiz.com](#)
- March 2018** [Farm-to-Table: An All-Texas Beer is in the Works & It's Worth the Wait, TexasHillCountry.com](#)
- February 2018** [Jester King Part & Parcel Batch 2 Release, The Full Pint](#)
- January 2018** [Blacklands Malt moved to Bagdad Road in Leander, Community Impact Newspaper](#)

### 2017

- October 2017** [Breakthroughs in the Science Behind Malt Flavor, craftbeer.com](#)
- March 2017** [Introducing Jester King Part & Parcel, Jester King Brewery](#)
- March 2017** [Circle Brewing celebrates six years with rebrand, canned beer releases, Austin 360](#)

### 2016

- October 2016** [First Brew with Texas Grown Malted Barley from Blacklands Malt, Jester King Brewery](#)
- September 2016** [Interest growing in barley for brewing, AgriLife TODAY](#)
- September 2016** [Craft Brewers Go Local: 6 Beers That Employ Craft Maltsters, Craft Beer & Brewing Magazine](#)
- August 2016** [Jester King & Jolly Pumpkin Collaborate on Space Waves, The Full Pint](#)
- January 2016** [Blacklands Malt plans for possible expansion/new location, Community Impact Newspaper](#)
- January 2016** [Real Ale Partners with Blacklands Malt for Brewers' Cut ESB, Real Ale Brewing Co.](#)
- January 2016** [Real Ale, Blacklands Malt team up for collaboration brew, Austin 360 Spirits](#)

### 2015

- November 2015** [Manor's Banner Distilling bottles up a wheat whiskey, Austin 360 Spirits](#)
- October 2015** [How Texan Is Our Beer, Really?, San Antonio Current](#)
- August 2015** [Leander malthouse cultivates quest for Texas identity in local beer, Austin American-Statesman](#)
- June 2015** [Malthouse Rising: 'Local' Beer Is Finally Coming Home, TakePart](#)
- June 2015** [Farm to Table Beer: Vital Connections from Grain to Brew, Beverage Master](#)

### 2014

- May 2014** [Local Beer Getting Way Literal with Blacklands Malt, Drive The District](#)
- May 2014** [Texas in the Bottle, Edible Austin](#)
- April 2014** [Austin Food & Wine Festival helps make local beer more local, Eats Blog](#)
- March 2014** [Blacklands Malt - local, small batch maltster, Accidental Brewing](#)
- February 2014** [Blacklands Malt beers from the Greenhouse!, Hops & Grain Brewery](#)
- February 2014** [Press Release: Increased Interest in Growing Malting Barley, AMBA](#)
- February 2014** [The Malts that Make Up Hubris, Black Star Co-op](#)
- January 2014** [Kerne. to Cup, The Austin Chronicle](#)
- January 2014** [Blacklands Malt, Community Impact Newspaper](#)
- January 2014** [For the Love of Craft Beer, You Stay Hoppy Austin](#)

## 2013

- December 2013** [Mated in Texas: Blacklands Malt Crops up in Leander, Bitch Beer](#)
- December 2013** [AFWA 2013 Grant Recipient, Austin Food and Wine Alliance](#)
- December 2013** [First Delivery of Blacklands Malt, Jester King](#)
- August 2013** [Coming Soon Announcement, Community Impact Newspaper](#)
- July 2013** [Malting: the latest craft, Brewer & Distiller International](#)
- April 2013** [Just Barley Texan, Texas A&M Foundation](#)

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## How to Order

- 1 Pick a malt
- 2 Choose quantity
- 3 Contact us
- 4 Relax

Call for bulk pricing - Prices and availability subject to change

Our community malthouse offers the first truly local malted grains for the brewing, distilling, and baking industries in Texas. If you want to capture the unique flavor of Texas you have to start with true Texas malt!

Let us be your local expert for custom craft malts and provide a level of on-site service you can't get anywhere else. Take a peek at our standard malt offerings but don't hesitate to call on us for specialty one-of-a-kind malts for unique projects.

**Send orders to:**

**[brandon@blacklandsmalt.com](mailto:brandon@blacklandsmalt.com)**

**512-944-3259**

**When ordering please keep in mind:**

Bulk pricing includes **free shipping** on orders above 500# for deliveries within Austin City Limits.

Bulk pricing *is applied to total order quantity*. Bulk volume can be split among different malt varieties.

Minimum order is 50# on regular (non-smoked) malts.

Minimum order of 200# required for smoked malts. Type of wood specified by customer. Many options available.

**Custom Contract and Toll Malting are available upon request**

**Custom Contract Malt:** You specify the finished malt characteristics using a choice of our grains and we malt it to spec.

**Toll Malting:** You provide us with your regionally grown grain and we malt it to spec.

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# **EXHIBIT M**

CONFIDENTIAL

FBLM\_0001834



# INAUGURAL

# BLACKLANDS BEERSHARE!

Help us celebrate the newest malthouse in America with a beershare event.

Bring some beer to share with your community maltsters and learn about malting!

**Saturday Sept 9**  
**2017 12pm-5pm**

- FREE beershare event & tours
- New Blacklands merch for sale
- Corn hole, washers, disc golf
- Food by Sweet-n-Cheezy
- Disney movies for kids
- <http://www.sweet-n-cheezy.com>

190 N. Bagdad Road  
Bld B Suite 300  
Leander, TX 78641  
[www.blacklandsmalt.com](http://www.blacklandsmalt.com)

*Friends and family welcome!*

Special sharing by





PRESENTS  
THE SECOND ANNUAL

**BEER SHARE**

**NOVEMBER 10TH, 2018**  
SATURDAY, 2PM TO 10PM

*Bring the whole family and join your local maltsters for a free day of fun and beer!*

- BYOB! COME SHOW US A BEER YOU'RE PROUD OF!
- APPLE BOBBING, CORN HOLE, RELAYS, AND MORE!
- FOOD TRUCKS ON SITE!
- RAFFLE WITH PRIZES!
- ALL PROCEEDS FROM EVENT WILL GO TO THE LUCKY LAB RESCUE CHARITY!

190 N. BAGDAD ROAD BLD B SUITE 300, LEANDER, TX 78641

BEER AND SUPPORT PROVIDED BY



# **EXHIBIT N**

P. Markus Kypreos  
7105 Meadowside Road South  
Fort Worth, Texas 76132  
Telephone: 817-773-7134

P. Markus Kypreos

markuskypreos@gmail.com

February 21, 2018

***Via FedEx***

King & Spalding, LLP  
Attn: Ms. Samantha Ade  
500 West 2<sup>nd</sup>, Ste. 1800  
Austin, Texas 78701

Re: Blacklands Malt Alleged Trademark

Dear Ms. Ade:

I received your overnight cease and desist letter on Saturday, February 17, 2018 concerning your client, Blacklands Malt, LLC and the alleged trademark infringement by my company M Distillery, Inc. d/b/a Blackland Distillery. You asked for a written response by March 2, 2018. As such, I have enclosed a courtesy copy of the attached lawsuit I have filed in Tarrant County, Texas against your client. Please let me know if you will accept service of the citation on behalf of your client upon receipt.

Prior to starting my distillery, I was a civil litigation attorney and partner at Pennington Hill, LLP, a law firm located in downtown Fort Worth, Texas. In the fifteen years I practiced law, I tried numerous cases to verdict. A cursory search of the cases I tried in both Tarrant and Dallas County would yield numerous names of opposing counsel that you may contact for references. I say that not to brag or highlight my abilities, but simply to make the point that in addition to the fact that I am confident a Tarrant County jury will find your client's allegations meritless, it will cost me far less to engage in litigation. However, as noted in the Petition, I have requested attorney's fees pursuant to Chapter 37.

I would also inform you and your client that a) I have filed for a federal trademark registration for the name Blackland Distillery (a trademark your client has never filed in any shape or form); and b) even if your client has some common law ownership right to the term "Blacklands Malt", one cannot trademark a geographical name or region. There are numerous cases on point that specifically state that "a trademark cannot consist of words in common use as designating locality, section or region of country." Further, when a trademark consists of a combination of words, letters, monograms, symbols, pictures and designs, it is not infringed unless the whole combination be used. And finally, the

appropriation of a word in one combination of words does not preclude its use in other combinations which are not likely to mislead.

While I am hopeful we can resolve this issue, I have already had to file the aforementioned lawsuit and am certainly ready to litigate these claims now that you have asserted and ownership right to my trademark.

Please do not hesitate to contact me with any questions or concerns at (817) 773-7134 or via email at [markuskypreos@gmail.com](mailto:markuskypreos@gmail.com).

Sincerely yours,

**By: /s/ P. Markus Kypreos**  
P. Markus Kypreos  
President/Owner  
Blackland Distillery

# CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): \_\_\_\_\_ COURT (FOR CLERK USE ONLY): \_\_\_\_\_

STYLED M DISTILLERY, INC. D/B/A BLACKLAND DISTILLERY v. BLACKLANDS MALT, LLC

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

<b>1. Contact information for person completing case information sheet:</b>  Name: _____ Email: _____ P. Markus Kypreos markuskypreos@gmail.com  Address: _____ Telephone: _____ 7105 Meadowside Road South 8177737134  City/State/Zip: _____ Fax: _____ Fort Worth/TX/76132  Signature: _____ State Bar No: _____ 24043769	<b>Names of parties in case:</b>  Plaintiff(s)/Petitioner(s): M Distillery, Inc. d/b/a  Blackland Distillery  Defendant(s)/Respondent(s): Blacklands Malt, LLC	<b>Person or entity completing sheet is:</b> <input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____  Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____  [Attach additional page as necessary to list all parties]
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**2. Indicate case type, or identify the most important issue in the case (select only 1):**

Civil			Family Law	
Contract	Injury or Damage	Real Property	Marriage Relationship	Post-judgment Actions (non-Title IV-D)
Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____  Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: _____ <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____  Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children  Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other  Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order  Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____
Employment	Other Civil			
<input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____	<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input checked="" type="checkbox"/> Intellectual Property	<input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____		
Tax	Probate & Mental Health			
<input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings		<input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____	

**3. Indicate procedure or remedy, if applicable (may select more than 1):**

<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action	<input checked="" type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment	<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover
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**4. Indicate damages sought (do not select if it is a family law case):**

Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees  
 Less than \$100,000 and non-monetary relief  
 Over \$100,000 but not more than \$200,000  
 Over \$200,000 but not more than \$1,000,000  
 Over \$1,000,000

Cause No. \_\_\_\_\_

M DISTILLERY, INC. D/B/A  
BLACKLAND DISTILLERY,

Plaintiff,

vs.

BLACKLANDS MALT, LLC,

Defendant.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

\_\_\_\_\_ JUDICIAL DISTRICT

TARRANT COUNTY, TEXAS

**ORIGINAL PETITION AND REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff M Distillery, Inc. d/b/a Blackland Distillery (hereinafter "Plaintiff" or "Blackland Distillery") and files this its Original Petition against Defendant Blacklands Malt, LLC (hereinafter "Defendant" or "Blacklands Malt"). In support, Plaintiff would show the Court the following:

**I. Discovery Control Plan**

1. Discovery shall be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure.

**II. Parties & Venue**

2. Plaintiff M Distillery, Inc. d/b/a Blackland Distillery is a Texas corporation organized and existing under the laws of the State of Texas with its principal place of business located in Tarrant County, Fort Worth, Texas.

3. Upon information and belief, Defendant Blacklands Malt, LLC is a limited liability company organized under the laws of the State of Texas and is registered to do business in the State of Texas with its principal place(s) of business represented to be



12300 Boneta Cove, Austin, Texas 78729. Defendant can be served through its registered agent Brandon A. Ade, located at 12300 Boneta Cove, Austin, Texas 78729.

4. Venue is proper in this Court pursuant to Section 15.002(a)(1) of the TEXAS CIVIL PRACTICE & REMEDIES CODE because all or a substantial part of the events or omissions giving rise to the claim occurred in Tarrant County, Texas and Plaintiff's principal place of business is located in Tarrant County, Texas.

5. At this time, Plaintiff seeks declaratory relief and aggregate monetary relief (including attorneys' fees) which is anticipated to exceed \$200,000 but not more than \$1,000,000. Plaintiff reserves the right to amend this pleading to seek other or additional relief as discovery progresses.

### **III. Facts**

6. This is a state law action for declaratory judgment under the Texas Uniform Declaratory Judgment Act, Tex. Civ. Prac. & Rem. Code § 37.001 et seq. Plaintiff seeks a declaratory judgment confirming (a) Plaintiff's ownership of and/or right to use a registered trademark, "Blackland Distillery" and (b) that Plaintiff has not infringed on any trademark rights of Defendant in connection with the name. Plaintiff further seeks a declaratory judgment allowing Plaintiff to use the mark "Blackland Distillery", as Plaintiff has filed a federal trademark registration concerning said name.

7. Plaintiff is a Fort Worth, Texas distillery whose building is currently being renovated. Plaintiff intends to produce Bourbon, Rye Whiskey, Gin and Vodka.

8. Defendant is, on information and belief, a Leander, Texas grain provider.

9. In a cease and desist letter drafted by the attorney for Defendant, attached hereto as Exhibit "A" and incorporated herein, it would appear that Defendant is

claiming ownership of the name and mark "Blacklands" because the name of Defendant's company is "Blacklands Malt, LLC" and as such, Defendant asserts it is entitled to any and all forms of the word "Blacklands" including the mark, which by Defendant's logic, includes "Blackland Distillery." By this same rational, any corporation using the words "black" or "lands" would fall under Defendant's ownership perview.

10. Plaintiff would further show that it applied for a federal registered trademark with the U.S. Patent and Trademark Office for the name and mark "Blackland Distillery" on December 21, 2017 in the class of distilled spirits. See Exhibit "B", attached hereto and incorporated by reference herein. Upon information and belief, Defendant does not have a registered trademark with the U.S. Patent and Trademark Office, nor has it filed for a Texas state trademark, for the name "Blacklands Malt, LLC." As noted by the United States Patent and Trademark Office: "The advantage of a trademark includes notice to the public of the registrant's claim of ownership of the mark, a legal presumption of ownership nationwide, and the exclusive right to use the mark on or in connection with the goods and/or services listed in the registration." (emphasis supplied).

#### **IV. Request for Declaratory Judgment**

11. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein.

12. Pursuant to § 37.004(a) of the TEXAS CIVIL PRACTICE AND REMEDIES CODE, Plaintiff asks the Court to enter a declaratory judgment establishing the parties' rights and obligations thereunder including but not limited to a declaration that:

- a. Plaintiff has not infringed on any common law trademark rights allegedly owned or held by Defendant in connection with the Mark Blackland Distillery;

- b. Plaintiff owns and holds exclusive ownership of and right to use the Mark Blackland Distillery and Defendant does not own or hold any interest in the Marks;
- c. Plaintiff possesses a superior right to Defendant in and to use the Blackland Distillery Mark; and/or
- d. Defendant is barred under Texas law from asserting any alleged rights in the Blackland Distillery Mark in light of the federal trademark filing of Plaintiff.

13. As established by the facts set forth above, there is an actual, present and practical need for declaratory relief because there is a justifiable controversy about the rights and obligations of the parties that is real and substantial and involves a genuine conflict of tangible interests.

#### **V. Attorney's Fees**

14. As a result of Defendant's wrongful conduct described above, Plaintiff was forced to retain the undersigned counsel in relation to this action. Pursuant to TEX. CIV. PRAC. & REM. CODE § 37.001, et. seq., Plaintiff seeks an award of reasonable and necessary attorneys' fees and costs incurred through trial and final appeal of this cause.

#### **VI. Conditions Precedent**

15. All conditions precedent to the recovery sought herein have been met or have been waived.

#### **VII. Request for Disclosure**

16. Defendant is requested to disclose all information set forth in TEXAS RULE OF CIVIL PROCEDURE 194.2 within 50 days of service of this Original Petition and Request for Disclosure.

### VIII. Relief Requested

For the reasons set forth herein, Plaintiff asks that Defendant be cited to appear and answer this suit and, upon final trial, the Court render judgment in favor of Plaintiff and against Defendant for declaratory relief; attorneys' fees; pre- and post-judgment interest and costs of suit as provided by law; and any other relief at law or in equity to which Plaintiff may show itself justly entitled.

Respectfully submitted,

By: /s/ P. Markus Kypreos  
P. Markus Kypreos  
State Bar No. 24043769  
[markuskypreos@gmail.com](mailto:markuskypreos@gmail.com)

7105 Meadowside Road South  
Fort Worth, Texas 76132  
Tel: (817) 773-7134

ATTORNEY FOR PLAINTIFF  
M DISTILLERY INC. D/B/A  
BLACKLAND DISTILLERY

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February 15, 2018

## VIA UPS NEXT DAY DELIVERY

Mr. Markus Kypreos  
M. Distillery, Inc.  
7105 Meadowside Rd. S.  
Fort Worth, Texas 76132-3521

Re: Blacklands Malt Trademark

---

Dear Mr. Kypreos:

We are counsel to Blacklands Malt, LLC, a Texas corporation ("Blacklands"). Blacklands is Texas's first craft malt house, providing locally sourced raw and malted grains to brewers, distillers, and consumers inside and outside Texas. Additional information is available at [www.blacklandsmalt.com](http://www.blacklandsmalt.com).

As you may be aware, our client is the owner of certain rights related to the trademark and trade name "BLACKLANDS MALT" (hereinafter "the BLACKLANDS Mark"). The BLACKLANDS Mark identifies our client as the source or origin of goods and services including raw and malted grains, among other things. These marks have been in continuous use in multiple jurisdictions since 2013. Our client has devoted substantial time, effort, and expense to the development of its mark and goodwill under the BLACKLANDS Mark. That goodwill is extremely important to our client, and it is equally important that they do not permit the use of any mark by a third party in such a way as to cause a likelihood of confusion as to sponsorship or affiliation with the source of the services offered under the BLACKLANDS Mark or related trademarks and trade names.

It has come to our client's attention that your company, M Distillery, Inc., intends to conduct business and offer products and services in connection with the trademark "BLACKLAND DISTILLERY" and the domain name <http://www.blacklanddistillery.com>. It is our understanding that you began using this company name and domain name in late December 2017 or January 2018. An application for a federal trademark was filed on December 21, 2017,



the assumed name "Blackland Distillery" was filed with the Texas Secretary of State on December 27, 2017, and the domain name was registered in early January 2018—long after Blacklands was using the BLACKLANDS Mark.

Considering the similarities of these marks, we believe that consumers will be confused as to the source of the goods associated therewith or the relationship of the owners of these trademarks. Our client is concerned that your use of the "BLACKLAND" mark may continue to cause confusion, to cause mistake, or to deceive consumers into believing that your company is associated or affiliated with, sponsored by, or endorsed by Blacklands Malt. These actions may constitute trademark infringement, unfair competition, dilution, and false designation of origin, in violation of trademark law of several jurisdictions.

Blacklands has no interest in causing hardship to your organization. However, to protect its trademarks, reputation, and goodwill, Blacklands demands that you:

- (1) immediately cease any and all use of or registration for the mark "BLACKLAND DISTILLERY" by itself as a simple word mark or in a stylized manner;
- (2) immediately cease using BLACKLAND, BLACKLANDS, or any other confusingly similar names in promotion, website content, or association with your business or your products; and
- (3) transfer the domain name [www.blacklanddistillery.com](http://www.blacklanddistillery.com) to Blacklands.

A prompt resolution will prevent further damage to Blacklands and allow your business to change names and branding inexpensively.

While we reserve all rights on behalf of our client, we would like to resolve this matter amicably and to that end we kindly request your written response by **Friday, March 2, 2018**.

If you would like to discuss this matter further, please do not hesitate to contact me at (512) 457-2028. If we do not receive a response, we will advise our client to take appropriate action to preserve and protect its trademark, trade name, and intellectual property rights. Thank you, and I look forward to hearing from you shortly.

Best regards,



Samantha Ade

**Filing Receipt for Trademark/Service Mark Application for Registration  
on the Principal Register  
and Next Steps in the Application Process**

Thank you for submitting your trademark application to the U.S. Patent and Trademark Office (USPTO). This filing receipt confirms your mark and serial number, describes next steps in the application process, and includes the information submitted in your application. Please read this receipt carefully and keep a copy for your records.

For an overview of important things to know after filing your application, visit our website to read the [After You File](#) page and watch video number 9 "[After You File](#)."

**1. Your mark.** BLACKLAND DISTILLERY (Standard Characters, mark.jpg)

The literal element of the mark consists of BLACKLAND DISTILLERY. The mark consists of standard characters, without claim to any particular font, style, size, or color.

**2. Your serial number.** Your application was assigned serial number '87731387'. You must refer to your serial number in all communications about your application.

**3. What happens next—legal examination.** Your mark will not be registered automatically. In approximately three months, your application will be assigned to a USPTO examining attorney for review. The attorney will determine if your application meets all applicable legal requirements, and if it doesn't you will be notified in an email with a link to the official Office action (official letter from the USPTO). Visit our website for an explanation of [application process timelines](#).

If your mark includes a design element, we will assign it one or more [design search codes](#). We will notify you of these codes within the next few weeks and you can suggest that we add or delete a design search code from your file.

**4. Keep your addresses current in USPTO records.** We do not extend filing deadlines if you do not receive USPTO mail or email. If your postal address or email address changes, you must update the correspondence or owner's address using the [address forms](#) on our website.

**5. Check your application status in our database every three to four months.** To be sure that you don't miss an important email from us, and to avoid the possible [abandonment](#) of your application, check your application status and review your documents in our database, [Trademark Status and Document Retrieval \(TSDR\)](#), every three to four months.

**6. Warning about private companies offering trademark-related services.** Private companies may send you communications that resemble official USPTO communications. These private companies are not associated with the USPTO. All official correspondence will be from the "United States Patent and Trademark Office" in Alexandria, Virginia, and from emails with the domain "uspto.gov." If you are unsure about whether the correspondence is from us, check your records in our database, [TSDR](#). Visit our website for more information on trademark-related [communications that may resemble official USPTO communications](#).

**7. Questions?** Please visit our [website](#), [email us](#), or call us at 1-800-786-9199 and select option 1.



**8. Application data.** If you find an error in the data below, visit the [After You File](#) page on our website for information on correcting errors.

**The information submitted in the application appears below:**

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PTO Form 1478 (Rev 09/2009)

OMB No. 0551-0009 (Exp 02/26/2018)

**Trademark/Service Mark Application, Principal Register**

**TEAS Plus Application**

*NOTE: Data fields with the \* are mandatory. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.*

The table below presents the data as entered.

Input Field	Entered
<b>TEAS Plus</b>	<b>YES</b>
<b>MARK INFORMATION</b>	
*MARK	mark.jpg
*STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	BLACKLAND DISTILLERY
*MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size, or color.
<b>APPLICANT INFORMATION</b>	
*OWNER OF MARK	M Distillery, Inc.
*STREET	7105 Meadowside Road S.
*CITY	Fort Worth
*STATE (Required for U.S. applicants)	Texas
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants)	76132
<b>LEGAL ENTITY INFORMATION</b>	
*TYPE	CORPORATION
* STATE/COUNTRY OF	Texas



<b>INCORPORATION</b>	
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
*INTERNATIONAL CLASS	033
*IDENTIFICATION	Distilled spirits
*FILING BASIS	SECTION 1(b)
<b>ADDITIONAL STATEMENTS INFORMATION</b>	
*TRANSLATION (if applicable)	
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	
*CONSENT (NAME/LIKENESS) (if applicable)	
*CONCURRENT USE CLAIM (if applicable)	
<b>ATTORNEY INFORMATION</b>	
NAME	Scott Davison
ATTORNEY DOCKET NUMBER	MDST.TM01US
FIRM NAME	Musick Davison LLP
STREET	12636 High Bluff Drive, Suite 400
CITY	San Diego
STATE	California
COUNTRY	United States
ZIP/POSTAL CODE	92130
PHONE	858-724-2450
FAX	858-430-2427
EMAIL ADDRESS	docketing@mdiplaw.net
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	Eleanor Musick
<b>CORRESPONDENCE INFORMATION</b>	
*NAME	Scott Davison

<b>FIRM NAME</b>	Musick Davison LLP
<b>*STREET</b>	12636 High Bluff Drive, Suite 400
<b>*CITY</b>	San Diego
<b>*STATE</b> (Required for U.S. addresses)	California
<b>*COUNTRY</b>	United States
<b>*ZIP/POSTAL CODE</b>	92130
<b>PHONE</b>	858-724-2450
<b>FAX</b>	858-430-2427
<b>*EMAIL ADDRESS</b>	docketing@mdiplaw.net;scott@mdiplaw.net
<b>*AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>FEE INFORMATION</b>	
<b>APPLICATION FILING OPTION</b>	TEAS Plus
<b>NUMBER OF CLASSES</b>	1
<b>APPLICATION FOR REGISTRATION PER CLASS</b>	225
<b>*TOTAL FEE PAID</b>	225
<b>SIGNATURE INFORMATION</b>	
<b>* SIGNATURE</b>	/Scott H Davison/
<b>* SIGNATORY'S NAME</b>	Scott H. Davison
<b>* SIGNATORY'S POSITION</b>	Attorney of record, CA Bar Member
<b>SIGNATORY'S PHONE NUMBER</b>	858-724-2450
<b>* DATE SIGNED</b>	12/21/2017

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PTO Form 1478 (Rev 09/2008)

OMB No. 0551-0099 (Exp 02/28/2013)

## **Trademark/Service Mark Application, Principal Register**

### **TEAS Plus Application**

**Serial Number: 87731387**

**Filing Date: 12/21/2017**

#### **To the Commissioner for Trademarks:**

The applicant, M Distillery, Inc., a corporation of Texas, having an address of  
7105 Meadowside Road S.  
Fort Worth, Texas 76132  
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 033: Distilled spirits

Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services. (15 U.S.C. Section 1051(b)).

#### **The applicant's current Attorney Information:**

Scott Davison and Eleanor Musick of Musick Davison LLP    12636 High Bluff Drive, Suite 400  
San Diego, California 92130  
United States  
858-724-2450(phone)  
858-430-2427(fax)  
docketing@mdiplaw.net (authorized)

The attorney docket/reference number is MDST.TM01US.

#### **The applicant's current Correspondence Information:**

Scott Davison  
Musick Davison LLP  
12636 High Bluff Drive, Suite 400  
San Diego, California 92130  
858-724-2450(phone)  
858-430-2427(fax)  
docketing@mdiplaw.net;scott@mdiplaw.net (authorized)

**E-mail Authorization:** I authorize the USPTO to send e-mail correspondence concerning the application to the applicant or the applicant's attorney, or the applicant's domestic representative at the e-mail address provided in this application. I understand that a valid e-mail address must be maintained and that the applicant or the applicant's attorney must file the relevant subsequent application-related submissions via the Trademark Electronic Application System (TEAS). Failure to do so will result in the loss of TEAS Plus status and a requirement to submit an additional processing fee of \$125 per international class of goods/services.

A fee payment in the amount of \$225 has been submitted with the application, representing payment for 1 class(es).

### **Declaration**

**Basis:**

**If the applicant is filing the application based on use in commerce under 15 U.S.C. § 1051(a):**

- The signatory believes that the applicant is the owner of the trademark/service mark sought to be registered;
- The mark is in use in commerce on or in connection with the goods/services in the application;
- The specimen(s) shows the mark as used on or in connection with the goods/services in the application; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

**AND/OR**

**If the applicant is filing the application based on an intent to use the mark in commerce under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e):**

- The signatory believes that the applicant is entitled to use the mark in commerce;
  - The applicant has a bona fide intention to use the mark in commerce on or in connection with the goods/services in the application; and
  - To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.
- To the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive.
- To the best of the signatory's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the allegations and other factual contentions made above have evidentiary support.
- The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting

therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

**Declaration Signature**

Signature: /Scott H Davison/ Date: 12/21/2017

Signatory's Name: Scott H. Davison

Signatory's Position: Attorney of record, CA Bar Member

Signatory's Phone Number: 858-724-2450

---

Thank you,

The TEAS support team

Thu Dec 21 22:45:41 EST 2017

STAMP: USPTO/FTK-209.194.81.191-20171221224541155999-87731387-

510f0955483c8fec99baef09d3ff6ed2923c63ba4088461c26a96839dcd6cd4-CC-8425-

20171221223348120743

# **EXHIBIT O**



**Blacklands Malt**

@BlacklandsMalt

Following

House beer with #blmalt. Made with 60% Red Winter Wheat, 40% Pale Moon 2 Row, Saaz, and orange peel.



1:22 PM - 6 Oct 2014

1 Retweet 3 Likes



1 Reply 1 Retweet 3 Likes 1 Message



Tweet your reply



**Jimmy Hill** @hillraiser2 · 6 Oct 2014

Replying to @BlacklandsMalt

@BlacklandsMalt So when does the shop turn into Blacklands Malt & Brewery? ;-)

1 Reply 1 Retweet 1 Like 1 Message

