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September 1, 2015

RECEIVED
SEP 2 2015
MI LIQUOR CONTROL COMMISSION
OFFICE OF THE CHAIRPERSON

FED EX
Michigan Liquor Control Commission
525 W. Allegan Street
Lansing, MI 48913

Re: Canal Street Brewing Co., LLC

Dear Sir/Madam:

Enclosed is the Petition to Revoke MLCC Administrative Rule R436.1311.

Please contact me if you have any questions.

Sincerely,

Anthony T. Barnes

TTB:tml
Enclosure
cc: Andrew J. Deloney, Chairperson
Teri L. Quimby, Administrative Commissioner
Dennis Olshove, Administrative Commissioner

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Michigan Liquor Control Commission

Canal Street Brewing Co., LLC	)
d/b/a Founders Brewing Company	)
	)
Petitioner	)

Petition to Revoke
MLCC Administrative Rule R436.1311

NOW COMES the Petitioner Canal Street Brewing Co., LLC by and through its attorney, Tony Barnes of Law Weathers, and pursuant to Administrative Procedures Act Chapter 24.244 Section 44 hereby Petitions the Michigan Liquor Control Commission ("MLCC") to Revoke MLCC Administrative Rule R436.1311 and in support thereof states as follows:

1. MLCC Rule R436.1311 states "An advertisement or label affixed to a container, covering, carton or case of containers of alcoholic liquor shall not depict or make reference in any manner to minors." This rule has been cited by the MLCC to deny approval of alcoholic beverage containers labels.

2. In a decision issued earlier this year the 6th Circuit Court of Appeals, in the case Flying Dog Brewery LLP v. MLCC, 597 F. App. 2d 342, found that disapproving labels for alcohol beverage containers deemed offensive or vulgar by the MLCC violated the First Amendment rights of the Plaintiff. As a result the 6th Circuit ruled that the MLCC's disapproval of a Flying Dog Brewery label was stricken and reversed by the Court.

3. Applying the holding and reasoning of the Flying Dog Brewery case to Administrative Rule R436.1311 can lead to only one conclusion. Namely that enforcement of Administrative Rule R436.1311 would violate the First Amendment.

4. Additionally, continued enforcement of Rule R436.1311 would result in unequal treatment of alcohol beverage producers. The inequality of enforcement would occur because certain possibly offensive labels would, based on the holding in the Flying Dog case, be approved while other labels which depict a minor would, due to R436.1311, have to be disapproved. This disparate and unequal treatment would have a negative impact on the market for alcoholic beverages in Michigan.

5. MCLA 24.244 permits the MLCC to amend or revoke any rule that is deemed to be, "obsolete or superseded, or that is required to make obviously needed corrections to make the rule conform to an amended or new statute or to accomplish any other solely formal purpose...." Mich. Com. Law Annot. Chapter 24 Section 24.244.

6. The Court's ruling in the Flying Dog Brewery case renders Administrative Rule R436.1311 obsolete, moot and unenforceable. Section 44 of the Administrative Procedure Act requires this Commission revoke R436.1311.

WHEREFORE, the Petitioner respectfully proposes that the MLCC enter on and revoke MLCC Administrative Rule R436.1311.

Respectfully Submitted,

Canal Street Brewing Co., LLC
d/b/a Founders Brewing Company

By: _____

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