

NEWS  
FOR IMMEDIATE RELEASE  
August 29, 2018



Hammer-Schlagen®  
5865 Neal Ave N / #113  
Stillwater, MN 55082

1-844-WHACK-IT  
<http://hammerschlagen.com/>

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## Hammer-Schlagen® Stump Registers As Trademark

*Current Owner Operating For 20-Years Under Extremely Rare Trademark Type  
Insured For \$1.5 Million*

**STILLWATER, MN (August 29, 2018)** -- Just as consumers recognize Coca-Cola by its three-dimensional bottle, the German-themed Hammer-Schlagen® nail driving competition is recognized by its three-dimensional stump. This three-dimensional configuration of shapes and designs, known as "trade dress," is protected as a trademark under federal law. In a public notice issued yesterday, the United States government registered WRB, Inc. of Minnesota as the only entity allowed to use the Hammer-Schlagen® stump. Hammer-Schlagen® originated in 1957 near Stillwater, Minnesota.

"We encourage competition," says Jim Martin, the CEO of WRB who oversees the operation of Hammer-Schlagen® at hundreds of events nationwide, "There's nearly unlimited combinations of objects to use to hold similar competitions. Go to the Steele County Fair in Minnesota, the Apple Popcorn Festival in Indiana, and the Berlin Fair in Connecticut." Of the nearly 2.4 million active and registered trademarks on the principal register, the Hammer-Schlagen® stump is one of only 30 trade dresses for service. "Trade dress is not well understood," says Martin, "and that's a huge problem. If someone uses our stump to offer an inferior service, the perception of those engaging under the counterfeit is irreversibly damaged, even if the Hammer-Schlagen® name or logo is never used. And, if someone gets hurt, we get blamed even though we've never had an insurable injury." A registered trademark owner victimized by willful infringement can recover up to \$2 million per incident.

"Lawsuits are expensive," says Martin. In 2015, the United States Patent & Trademark Office prosecuted the trade dress for over 2-years before acknowledging the Hammer-Schlagen® stump was a valid trademark eligible for registration. In 2016, Vision Marketing, LLC, of Washington was accused (in part) of counterfeiting the stump which ended in settlement earlier this year. This was followed by a court dismissing a 2017 case filed by Eichenfeld, LLC of New York for Eichenfeld's failure to produce any evidence the Hammer-Schlagen® stump was not a valid trademark or that WRB did not own it. In June, the Intellectual Property Insurance Services Corporation of Kentucky insured the famous Hammer-Schlagen® brand. In the event WRB is forced to take further litigation against Hammer-Schlagen® infringers, IPISC will pay for the legal costs up to \$1.5 million.

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Contact: Jim Martin, 651-705-6393.

Find this press release at <[http://www.hammerschlagen.com/press\\_releases/?id=2018-08-29](http://www.hammerschlagen.com/press_releases/?id=2018-08-29)>.

# United States of America

United States Patent and Trademark Office



**Reg. No. 5,548,112**

**Registered Aug. 28, 2018**

**Int. Cl.: 41**

**Service Mark**

**Principal Register**

WRB, Inc. (MINNESOTA CORPORATION), DBA Hammer-Schlagen  
5865 Neal Ave N  
#113  
Stillwater, MINNESOTA 55082

CLASS 41: Entertainment services in the nature of providing persons an opportunity to participate in a game in which participants drive nails into wood

FIRST USE 9-00-1988; IN COMMERCE 2-26-1999

The mark consists of a three-dimensional configuration constituting trade dress comprising of a cylindrical cross-section of a tree with nails positioned around the outer circumference of its upward facing flat circular surface, and a cross-peen hammer whose head is shaped in the manner depicted in the drawing.

OWNER OF U.S. REG. NO. 2405337

SEC.2(F)

SER. NO. 86-710,523, FILED 07-30-2015



*Andrei Iancu*

Director of the United States  
Patent and Trademark Office

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500  
General Email: [TTABInfo@uspto.gov](mailto:TTABInfo@uspto.gov)

nmt

July 23, 2018

Opposition No. 91234178

*Eichenfeld, LLC*

*v.*

*WRB, Inc.*

**By the Trademark Trial and Appeal Board:**

Applicant's motion for involuntary dismissal (filed June 12, 2018) is granted as conceded. *See* Trademark Rules 2.127(a) and 2.132.

Accordingly, the opposition is dismissed with prejudice.

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

May 08, 2018

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

WRB, INC., a Minnesota corporation,

Plaintiff,

v.

VISION MARKETING, LLC a  
Washington LLC; OKTOBERFEST  
AT THE RIVER, a Washington  
unregistered partnership; THOMAS  
STEBBINS and KAREN  
STEBBINS, individually and on  
behalf of their marital community,

Defendants.

NO: 2:16-CV-436-RMP

ORDER OF DISMISSAL WITH  
PREJUDICE

BEFORE THE COURT is the parties' Stipulation of Dismissal with  
Prejudice, ECF No. 73. Having reviewed the Stipulation and the record, the Court  
finds good cause to approve dismissal. Accordingly, **IT IS HEREBY ORDERED:**

1. The parties' Stipulation of Dismissal with Prejudice, **ECF No. 73**, is

**APPROVED.**

1 2. Plaintiff's Complaint is dismissed with prejudice and without costs to any  
2 party.

3 3. All pending motions, if any, are **DENIED AS MOOT**.

4 4. All scheduled court hearings, if any, are **STRICKEN**.

5 5. Judgment shall be entered dismissing all claims against Defendants with  
6 prejudice.

7 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this  
8 Order, enter Judgment as directed, provide copies to counsel, and **close this case**.

9 **DATED** May 8, 2018.

10  
11 *s/ Rosanna Malouf Peterson*  
12 ROSANNA MALOUF PETERSON  
13 United States District Judge  
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