

## A Major Brew-haha on Tap

By [Elisabeth Moriarty](#) on January 23, 2012



In honor of Dr. Martin Luther King Jr., last Monday my husband and I found ourselves with three glorious hours to kill midday, while our daughter visited a friend. We could have cleaned out the garage, but instead we went to lunch at a new-ish bar and grill which prides itself on serving over 100 beers on tap. As I perused the vast beer menu, I was struck by the creativity (and in some cases absurdity) of the names these breweries had invented for their ambers and ales.

There were a few that were a bit embarrassing (“Flying Dog Doggie Style Pale Ale?” Seriously, I don’t think I can’t ask for that without blushing, so it better be good). Some made me laugh out loud (I thought “Unibroue Ephemere Cassis” was hysterically punny, until I learned that “Unibroue” is the actual name of the Quebec-based brewery). Few names were conventional and many were downright clever.

I knew vaguely about the ancient and globe-spanning trademark dispute between American brewer Anheuser-Busch and the Czech beer producer Budejovicky Budvar over the right to use the trademarked name “Budweiser” — a battle which has been brewing since 1870. But with so many beers and so many creative names and logos, I wondered, as even slightly tipsy lawyers tend to do, how often breweries found themselves in a legal kerfuffle over their beloved (and lucrative) alcoholic beverages. Aren’t these guys supposed to be mellow and laid back (well, except, perhaps, for the guys who make Arrogant Bastard Ale)? They make beer, for Pete’s sake.

Well, it turns out that brewers stir up litigation more often than you might think.

Last year, for example, Magic Hat Brewing Company, whose flagship beer is called “#9,” claimed Georgetown Brewing violated its trademark when it named its latest porter “9LB Porter” after a local bar named the “9LB Hammer” (with permission from the bar), and demanded that the name be changed. Who knew that a number could be so unique and distinctive? (And why didn’t Magic Hat name its beer “#3” — c’mon, everyone knows that three, not nine, is **the real magic number.**) That



mystery aside, Georgetown Brewing ended up caving and **renamed its beer the decidedly less interesting “Georgetown Porter” to avoid the dispute**. Was Magic Hat right in policing its trademark, or, as some beer aficionados contend, was the bigger company simply throwing its weight around to bully another smaller brewer whose beer was far better?

Before you answer, consider the case of beer behemoth Bass Ale against (decidedly more amusingly named) Smuttynose Brewing Company. Bass was hopping mad when it learned that Smuttynose’s new logo depicted the **head of a harbor seal framed by a yellow triangle in the background**, because Bass’s label, as beer lovers will know, has long displayed a **“well-established trademark” consisting of a red triangle** (it even says “Trademark” right inside the triangle!). So now I ask you: would anyone — even an alcohol-impaired beer consumer — reasonably confuse the two? We’ll never know, because, here again, Smuttynose determined that it wasn’t worth the fight, and **changed the yellow triangle behind the seal’s head to a triangle-shaped rock**.

And if this weren’t enough to drive you to drink, Texas-based microbrewer Freetail Brewing Co. **recently received a nasty cease-and-desist letter** from Oregon-based Steelhead Brewing Company over the name “Hopasaurus Rex” — a name that Steelhead was using for its beer. Freetail was only using the name in connection with a brewing process, but once again, Freetail gave in to legal pressure and discontinued using the name. This time, however, the little guy got the last laugh.

Now, we’ve **previously blogged** about the wonders of the **creative cease and desist letter**. But here, it is **Freetail’s hilarious response letter** that takes the proverbial keg, er, cake. The letter is worth reading in its entirety, but here are a few excerpts to wet your whistle:

“Since you are from [redacted], under normal circumstances I would assume you have a beard...I do too! But, since you are a lawyer, you probably just have some expensive suits instead. Way less cool, but whatever works for you, man. ...

HOPASAURUS REX is a name we give to a process upon which we apply to a beer and not the beer itself. Normally I would tell you what this process is, but I really don’t feel like it any more since your

first introduction to me wasn't very nice. Furthermore, I don't want you to try to trademark it and sue me later."

The brewers at Freetail have apparently been touched by his noodly appendage.



Freetail's owner acquiesces to Steelhead's demands, because "we don't use HOPASAURUS REX enough to care about what we call it." But he "requests (but not demands)" that the lawyer inform his client that "they could have just asked us nicely and saved the legal fee. I also request (but not demand) you please tell them that I *will not* be giving them a hug if I ever meet them, but I'd love to try their beer at the next Great American Beer Festival and I would still give them a high five." The letter concludes with a drawing of a surrendering T-Rex waving white flags, and is CC'd to the **Flying Spaghetti Monster** (an Internet-age version of Russell's teapot — an analogy used to illustrate that the philosophic burden of proof should lie upon those who make claims that are scientifically impossible to prove false, not on those who reject them — which is also the deity of a [largely atheistic] community of "**pastafarians**" who have been "**touched by his noodly appendage**").

Wow. Someone buy that Freetail guy a beer. Better yet, give him a legal degree — that letter is brilliant.

With all the new craft breweries popping up each year, I guess it is unavoidable that litigation will ensue over naming rights, although, given the product at the heart of the dispute, it seems like these adversaries should be able to share a cold one and come up with a palatable solution. In fact, that's **exactly what happened** when Russian River Brewing and Avery Brewing learned that they each had named their respective Belgian-style ales "Salvation." On the brink of a dispute, they ultimately brewed up a unique solution: instead of fighting, they joined forces, blending their two beers and marketing the new concoction together. What did they name this hybrid beer, you ask? The answer is obvious: "Collaboration Not Litigation Ale." [Ed. Note: And it is *delicious*.]

I'll drink to that.