

Society of Beer Advocates (SOBA) Inc.  
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James & Wells  
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New Zealand

**Friday 17<sup>th</sup> July 2009**

Society of Beer Advocates (SOBA):

**RADLER, the battle lines are drawn**

In a cynical, but widely predicted move designed to maximise the distance from May's negative publicity, DB has waited until the very last day possible to defend its trademarking of 'radler', the name of a recognised beer style.

On Friday 10<sup>th</sup> July, the last day permissible, DB's lawyers, Simpson Grierson, submitted a counterstatement to the Intellectual Property Office of New Zealand (IPONZ), registering the brewer's intention to contest the Declaration of Invalidity filed by SOBA's patent attorneys James & Wells Intellectual Property.

What happens now?

- SOBA's attorneys James & Wells now have up to two months to submit evidence to IPONZ.
- After this evidence has been filed DB's lawyers have two months to file evidence in support of their claim that 'radler' is not a generic term.
- James & Wells then have a further month for a right of reply before a formal hearing at IPONZ, adjudicated by an IPONZ Assistant commissioner.

SOBA's lawyer, Ceri Wells of James & Wells has already stated an intention to present his evidence as soon as possible, but DB's inclination for maximum delay suggests the case could drag on for some months yet.

Ceri considers the outcome of the case revolves around two main issues:

- Whether DB knew 'radler' was a generic term for a recognised beer style when it applied to register 'radler' as a trade mark.

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- Whether, at the time the trade mark application was filed, the generic term 'radler' was known and understood in New Zealand.

On the first point SOBA contends a large, European-owned brewer such as DB would be all too aware of such a popular beer style as 'radler'. On the second issue, Ceri Wells and SOBA are now inviting written statements from as many of the country's brewers, importers, retailers and beer lovers as possible.

In order to assist in the case, SOBA invites anyone prepared to state their knowledge of 'radler' prior to 2003, or with any other information showing 'radler' to be a generic term, to contact us at [info@soba.org.nz](mailto:info@soba.org.nz).

SOBA re-states its assertion that no brewery should be allowed to 'own' sole rights to the use of beer style names. SOBA believes that any such ownership is anti-competitive and detrimental to the education of the New Zealand consumer.

#### **RADLER, the background:**

- In 2003 DB Breweries, producer of the Monteith's range of beers, was granted a trade mark on the name RADLER and is now preventing other brewers from using it.
- In November 2008 Dunedin's Green Man Brewery began making a radler beer, but DB's lawyers soon served papers ordering the brewery to cease selling it. Unable to afford a protracted legal battle with DB the microbrewery capitulated and relabelled its beer Green Man Cyclist.
- In response to the frustrations expressed by the Society of Beer Advocates (SOBA) Inc about DB Breweries' trade marking and preventing others from using the generic term "radler" in relation to their beer, James & Wells Intellectual Property has offered SOBA Inc the services of its specialist intellectual property litigation group on a pro-bono basis to invalidate DB Breweries' trade mark registration for RADLER.
- In May 2009, James & Wells, acting on behalf of SOBA, issued an Application for Declaration of Invalidity for New Zealand Trade Mark Registration No. 700726 RADLER in the name of DB Breweries Limited.

SOBA argues:

- 1 - That 'radler' - like Pilsener, porter, brown ale, bock etc. - is a generic name for a recognised style of beer and should therefore not be permitted to be a term owned by one brewery. A simple search of the internet will give an indication of the number of breweries producing radlers.
- 2 - That DB was most certainly well aware that 'radler' is a recognised style of beer. Indeed Monteith's own website acknowledges radler's stylistic heritage: "The style originates from Bavaria and was first created in the early 1920's..."

About SOBA:

- The Society of Beer Advocates (SOBA) is an independent, non-profit society whose main aim is promoting a wider availability of better quality beer.

SOBA's goals are:

- \* To promote awareness of beer in all its flavour and diversity
- \* To protect and improve consumer rights with regards to beer and associated service
- \* To promote quality, choice and value for money
- \* To campaign for greater appreciation of traditional crafted beer
- \* To seek improvements in all licensed premises and throughout the brewing industry
- \* To act as an independent resource for both the consumer, the pub trade, and the brewing industry

**Website: [soba.org.nz](http://soba.org.nz)**

**Contact: Society of Beer Advocates: Greig McGill, [greig@soba.org.nz](mailto:greig@soba.org.nz), 021 753 026**

**Ends:**