

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

In re Registration No. 2,926,706
Registered February 15, 2005

MOET HENNESSY ASIA PACIFIC
PTE LTD

Petitioner,

v.

Celebration Distillation Corporation
Respondent.

Cancellation No. 92044336

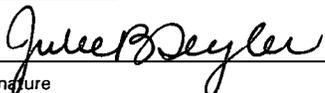
**PETITIONER'S MOTION TO AMEND
AND
AMENDED PETITION OF CANCELLATION
UNDER RULE 15(a)**

CERTIFICATE OF MAILING

Date of Deposit : June 2, 2005

I hereby certify that this correspondence is being deposited with the United States Postal service as First Class Mail in an envelope addressed: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451

JULIE B. SEYLER


Signature



06-07-2005

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #39

Petitioner, Moet Hennessy Asia Pacific Pte. Ltd.¹, respectfully requests that the above-identified cancellation be amended as shown in the attached AMENDED NOTICE OF CANCELLATION. By the amendment, Petitioner is seeking to clarify Paragraph 6 of the petition which states that:

Petitioner has filed Application No. 78/389468 for 10 CANE for spirits and liqueurs, namely rum and rum-based alcoholic beverages, prepared alcoholic cocktails, fruit flavoured alcoholic beverages in Class 33, and said application is currently suspended because the Trademark Office has cited Registrant's mark as a potential basis for refusing registration.

Petitioner requests that this be amended to:

Petitioner has filed Application No. 78/389468 for 10 CANE for rum and cachaca in Class 33, and said application is currently suspended because the Trademark Office has cited Registrant's mark as a potential basis for refusing registration.

Rule 15(a) of the Federal Rules of Civil Procedure provides that after a responsive pleading has been filed:

a party may amend the party's pleadings only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

It is respectfully submitted that the amendment will not prejudice Respondent. The cancellation is based on the fact that CANE is descriptive. It means "sugar cane", which is a key ingredient of rum. By this cancellation Petitioner is seeking the Board to find that the word CANE is not subject to exclusive appropriation and allegations related thereto are not affected by the amendment to Paragraph 6.

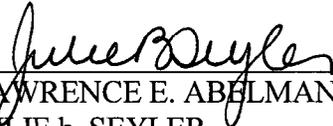
Further the amendment is a clarification. It does not constitute a substantive change in the basis or nature of the proceedings. Petitioner's claim of standing (the mark 10 CANE for liquors and spirits, including rum) and the application upon which the opposition is

¹ Petitioner is the assignee of JAS Hennessy & Co., Ltd, ("JAS), the party that filed Application No. 78/389468 on March 23, 2004. JAS assigned the mark to Petitioner on January 13, 2005, prior to March 3, 2005, the date the cancellation was filed. The assignment was filed for recordal on May 26, 2005. (Attached as Exhibit A).

based (Application No. 78/389468) remains the same. Further, the factual statement relating to Petitioner's damage as set forth in Paragraph 7 remains the same, namely that the continued registration of Registrant's mark CANE may prevent Petitioner from registering 10 CANE mark and will also create an unacceptable risk to Petitioner's use of CANE in its ordinary descriptive sense.

Therefore it is respectfully requested that the AMENDED NOTICE OF CANCELLATION be accepted.

Respectfully submitted,


LAWRENCE E. ABELMAN
JULIE b. SEYLER

ABELMAN FRAYNE & SCHWAB
666 Third Avenue
New York, New York 10017
212-949-9022

Attorneys for Petitioner

LEA/JBS:rd

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In re Registration No. 2,926,706
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MOET HENNESSY ASIA PACIFIC
PTE LTD

Petitioner,

v.

Celebration Distillation Corporation
Respondent.

Cancellation No. 92044336

AMENDED NOTICE OF CANCELLATION

Moet Hennessy Asia Pacific Pte Ltd., a Singapore corporation with a place of business at 83 Clemenceau Avenue, #17-07 UE Square, Singapore 239920 (“Petitioner”), believes it will be damaged by Registration No. 2,926,706 for CANE for the goods “rum”, issued to Celebration Distillation Corporation (“Registrant”) and hereby petitions to cancel this registration.

As grounds for cancellation, it is alleged that:

1. Registrant owns Registration No. 2,926,706 for CANE for rum.
2. Upon information and belief, sugar cane, also known as CANE, is a primary ingredient in the manufacture of rum.
3. Upon information and belief, Registrant’s alleged mark is not inherently distinctive and has not acquired secondary meaning.
4. Inasmuch as CANE is a primary ingredient of rum, it is a term that should be in the public domain and is not subject to exclusive

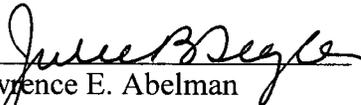
appropriation.

5. Applicant's mark CANE is merely descriptive and registration of same on the Principal Register constitutes a violation of 15 U.S.C. 1052(e)(1).
6. Petitioner has filed Application No. 78/389468 for 10 CANE for rum and cachaca.
7. The continued registration of Registrant's mark will damage Petitioner in that it may prevent Petitioner from registering its 10 CANE mark and will also create an unacceptable risk to Petitioner's use of CANE in its ordinary descriptive sense.
8. By virtue of the facts set forth in the foregoing allegations, Petitioner has been damaged and will continue to be damaged within the meaning of 15 U.S.C. §1064.

WHEREFORE, Petitioner requests that Registration No. 2,926,706 be canceled.

Respectfully submitted,

Date: June 2, 2005

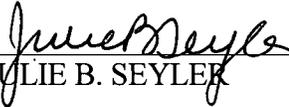

Lawrence E. Abelman
Julie B. Seyler

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New York, New York 10017-5612
Telephone: (212) 949-9022
Facsimile: (212) 949-9190

CERTIFICATE OF SERVICE

I hereby certify that the foregoing MOTION TO AMEND AND AMENDED PETITION OF CANCELLATION was served by first class mail, postage prepaid this 2nd day of June 2005 upon the following:

Thomas M. McEachin, Esq.
Schonekas, Winsberg, Evans & McGoey, L.L.C.
Texaco Center
400 Poydras Street, Suite 1440
New Orleans, Louisiana 70130



JULIE B. SEYLER

RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

To the Honorable Commissioner of Patent and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

JAS HENNESSY & CO. LTD

- Individual(s) Association
 General Partnership Limited Partnership
 Corporation - Ireland
 Other _____

Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies):

MOET HENNESSY ASIA PACIFIC PTE LTD
83 Clemenceau Ave., #17-07
UE Square
Singapore 239920

- Individual(s) citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership _____
 Corporation - Singapore
 Other - _____

Domestic representative is attached: Yes No
Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:

- Assignment Merger
 Security Agreement Change of Name
 Other _____

Execution Date: January 13, 2005

4. (A.) Trademark Application No.(s)

78/389468

4. (B.) Trademark Registration No.(s)

Additional numbers attached? Yes No

5. Correspondence should be mailed to:

VICTOR M. TANNENBAUM
ABELMAN, FRAYNE & SCHWAB
150 East 42nd Street
New York, New York 10017

6. Total number of applications and registrations involved:..... 1

7. Total fee (37 CFT 3.41): \$ 40.00

Enclosed
(The said Deposit Account should be charged for any official fee not fully covered by the enclosed check)

Authorized to be charged to deposit account
Deposit account number: 01-0035

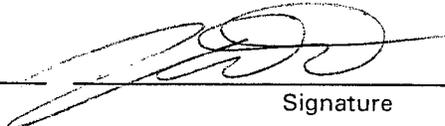
(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

8. Statement and signature.

To the best of my knowledge and belief the foregoing information is true and correct and any attached copy is a true copy of the original document.

VICTOR M. TANNENBAUM
Name of Person Signing



Signature

5/26/05
Date

Total number of pages comprising cover sheet, attachments and documents: 3

UNITED STATES OF AMERICA

ASSIGNMENT

WHEREAS, JAS HENNESSY & CO. LTD, a company organized and existing under the laws of Ireland, with an office at Central Hotel Chambers, Dame Court, Dublin 2, Ireland (hereinafter called the ASSIGNOR) is the owner of and has adopted the following trademark for which an application for registration has been filed in the United States Patent and Trademark Office:

<u>Trademark</u>	<u>Number</u>
10 CANE	78/389468 (Appl.)

AND WHEREAS, MOET HENNESSY ASIA PACIFIC PTE LTD, a company organized and existing under the laws of Singapore with an office at 83 Clemenceau Ave., #17-07, UE Square, Singapore 239920 (hereinafter called the ASSIGNEE) is desirous of acquiring the right, title and interest in and to the said trademark and the eventual registration thereof.

NOW, THEREFORE, in consideration of U.S. \$1.00 and other good and valuable consideration, the receipt of which is hereby acknowledged, the said ASSIGNOR by these presents does sell, assign and transfer unto the said ASSIGNEE, its successors and assigns, its right, title and interest in and to the said trademark, trademark application and eventual trademark registration together with that part of the goodwill of the ASSIGNOR's business connected with the use of and symbolized by the said trademark.

IN WITNESS WHEREOF, the said ASSIGNOR has hereunto executed this instrument this 13th day of JANUARY, 2005

JAS HENNESSY & CO. LTD

By Gilles Hennessy
Title Vice-President Gilles Hennessy