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

### Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

#### Petitioner Information

Name	Kesselher Wine Shippers GmbH		
Entity	Corporation	Citizenship	Germany
Address	Gutenbergstrasse 5 Heidenrod, D-65321 GERMANY		

Attorney information	Jeffrey H. Greger Lowe Hauptman Ham & Berner 1700 Diagonal Rd. Suite 300 Alexandria, VA 22314 UNITED STATES jhgreger@ipfirm.com,kbaird@ipfirm.com Phone:703-684-1111		
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#### Registration Subject to Cancellation

Registration No	3342878	Registration date	11/27/2007
Registrant	Dale W. Bronstein 1832 Norwood Plaza Hurst, TX 76054 UNITED STATES		

#### Goods/Services Subject to Cancellation

Class 033. First Use: 1981/01/01 First Use In Commerce: 1981/01/01 All goods and services in the class are cancelled, namely: Wine
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#### Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
The registration is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used.	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)
Other	False claim of ownership

#### Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77203736	Application Date	06/12/2007
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	WILHELM BERGMANN
Design Mark	
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 1985/12/01 First Use In Commerce: 1985/12/01 Alcoholic beverages, namely red and white wine

Attachments	77203736#TMSN.jpeg ( 1 page )( bytes ) 3-17-08CancellationPetition.pdf ( 7 pages )(203985 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/jeffreygreger/
Name	Jeffrey H. Greger
Date	03/17/2008

Cancellation Petition

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

In the matter of U.S. Registration No. 3,342,878

Mark: **WILHELM BERGMANN**

Registration Date: November 27, 2007

Kespelher Wine Shippers GmbH,	)	
	)	
Petitioner,	)	
	)	
v,	)	Cancellation No.: to be assigned
	)	
Dale W. Bronstein d/b/a First National	)	
Wine & Spirits Co.	)	
	)	
Registrant	)	
	)	

**PETITION TO CANCEL REGISTRATION**

Petitioner, Kespelher Wine Shippers GmbH, a legal business entity formed under the laws of Germany, with a principal place of business located at Gutenbergstrasse 5, Heidenrod, Germany, D-65321, believes that it is being damaged by Registration No. 3,342,878 and hereby petitions to cancel same on the following grounds.

Cancellation Petition

COUNT I – FALSE CLAIM OF OWNERSHIP

1. Upon information and belief, Registrant Dale Bronstein, doing business as First National Wine & Spirits Co., (hereinafter referred to as “Bronstein”) is a domestic distributor of wines manufactured by others outside the United States.
2. For more than two decades Bronstein has served in the capacity as a sales agent and domestic distributor on behalf of Petitioner Kespelher Wine Shippers GmbH (hereinafter Petitioner is referred to as “Kespelher”).
3. Bronstein’s position as a domestic distributor and sales agent on behalf of Kespelher entitled Bronstein to a monetary sales commission for distributing Kespelher’s wines to wholesalers of wine in the United States.
4. The brand name “Wilhelm Bergmann” is one wine brand shipped by Kespelher into the United States with the domestic assistance of Bronstein.
5. Kespelher compensated Bronstein for his domestic distribution services.
6. Kespelher is the owner of the brand “Wilhelm Bergmann” for wine.
7. Kespelher’s agency agreement with Bronstein did not provide Bronstein any rights in ownership of the brand Wilhlem Bergmann.

## Cancellation Petition

8. Kespelher's agency agreement with Bronstein did not provide Bronstein any rights in the ownership of any brands owned by Kespelher in Germany or in the United States.
9. Kespelher's agency agreement with Bronstein provided that Bronstein was to be paid a commission on wine shipped from Kespelher to distributors in the United States.
10. Bronstein was not provided any authorization by Kespelher to claim ownership, right, title, or to file trademark applications claiming rights in trademark for the mark "Wilhelm Bergmann" covering wine.
11. Despite the lack of authorization, Bronstein filed a trademark application with the U.S. Patent and Trademark Office (USPTO) on February 5, 2007 seeking coverage for the mark Wilhelm Bergmann for wine. The USPTO assigned serial number 77/099,592 to the Bronstein application (hereinafter referred to as the '592 application),
12. The USPTO matured the '592 application into registration number 3,342,878 (hereinafter also referred to as the '878 registration).
13. Kespelher filed its own application for the identical mark, Wilhelm Bergmann, covering wine with the USPTO on June 15, 2007. The USPTO assigned serial

## Cancellation Petition

number 77/203736 to the Kespelher application. (hereinafter referred to as the '736 application.

14. The '736 application has been initially refused by the Trademark Examining Attorney assigned by the USPTO, asserting grounds of confusion based on the earlier filed '592 application in the name of Bronstein, which has since matured into U.S. trademark registration number 3,342,878.
15. Kespelher has attempted to obviate the instant petition to cancel the '878 registration by first requesting that Bronstein, as its domestic wine distribution agent, assign the '878 registration to Kespelher, but Bronstein has refused.
16. Kespelher is the owner of the Wilhelm Bergmann brand in Germany.
17. Kespelher is the owner of the Wilhelm Bergmann brand in the United States under common law.
18. Bronstein falsely claimed ownership of the mark Wilhlem Bergmann when signing the declaration and filing same in support of the '592 application, which has since matured into the registration petitioned against herein.

### COUNT II – FRAUD

19. All prior allegations are incorporated herein by reference.

## Cancellation Petition

20. On information and belief the actions by Bronstein in falsifying the ownership information in the '592 application which led to the maturation of the '872 registration constitutes fraud on the USPTO.

### COUNT III – LIKELIHOOD OF CONFUSION

21. All prior allegations are incorporated herein by reference.
22. On information and belief that consumers are likely to be confused that wine sold in bottles under the brand Wilhelm Bergmann sold by Bronstein are authorized by Kespelher, the true owner of the brand, when no such authorization exists.
23. Continued use of the brand Wilhelm Bergmann by Bronstein is likely to cause confusion as to source and removes control over the brand by the true owner.
24. The '852 registration provides Bronstein prima facia evidence of the exclusive rights to use the brand "Wilhelm Bergmann" despite Bronstein not being the true owner or the true source or indicia of the brand for wine.

Wherefore, Petitioner believes that it will be damaged by the continued existence of the perceived validity of Registration No. 3342878 and prays that this Petition for Cancellation be sustained in favor of the Petitioner; that judgment be entered against the Registrant; and that the U.S Trademark Registration No. 3342878 be canceled.

Cancellation Petition

Petitioner submits the applicable filing fee of \$300.00 with this Petition.

Respectfully submitted,  
LOWE HAUPTMAN HAM & BERNER, LLP



Jeffrey H. Greger  
Attorney for Applicant,

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Alexandria, Virginia 22314  
Tel: (703) 684-1111  
Fax: (703) 518-5499

March 17, 2008

Cancellation Petition

**Certificate of Service**

I hereby certify that a copy of the foregoing PETITION TO CANCEL has been forwarded to Registrant and his listed attorney of record using the contact information contained in the U.S. Patent and Trademark Office records as appears below, by prepaid United States mail this 17 th day of March, 2008.

Dale W. Bronstein  
1832 Norwood Plaza  
Hurst, TX 76054

Stephen L Baker, Esq.  
Baker and Rannells PA  
Suite 102  
575 Route 28  
Raritan NJ 08869

Dated: \_\_\_\_\_

3-17-08



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Jeffrey H. Greger VSB 41500