

ESTTA Tracking number: **ESTTA207140**

Filing date: **04/24/2008**

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	Pour LLC		
Entity	limited liability company	Citizenship	Oregon
Address	2755 NE Broadway Portland, OR 97232 UNITED STATES		

Attorney information	Natalia Yegorova Black Helterline LLP 1900 Fox Tower 805 SW Broadway Portland, OR 97205 UNITED STATES ny@bhlaw.com Phone:503-224-5560
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Registration Subject to Cancellation

Registration No	3277956	Registration date	08/07/2007
Registrant	CHM Associates LLC #2-E 336 Central Park West New York, NY 10025 UNITED STATES		

Goods/Services Subject to Cancellation

Class 035. First Use: 2006/12/06 First Use In Commerce: 2006/12/06 All goods and services in the class are cancelled, namely: Retail wine store services

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77052994	Application Date	11/29/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	POUR		
Design Mark			
Description of Mark	The mark consists of word elements in a stylized form, with a letter "O" being represented by a wine glass stain.		
Goods/Services	Class 033. First use: First Use: 2005/04/01 First Use In Commerce: 2005/08/05 Wine		

	Class 043. First use: First Use: 2005/04/01 First Use In Commerce: 2005/08/05 Wine bars
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Attachments	77052994#TMSN.jpeg (1 page)(bytes) Petition to cancel.pdf (3 pages)(938445 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	/Natalia Yegorova/
Name	Natalia Yegorova
Date	04/24/2008

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

IN THE MATTER OF:
REGISTRATION NO. 3,277,956

Pour LLC,

Petitioner,

v.

CHM Associates LLC,

Registrant.

Cancellation No. _____

PETITION TO CANCEL

Pour LLC, an Oregon Limited Liability Company (hereinafter "Petitioner"), with a principal place of business at 2755 NE Broadway, Portland, OR 97232, asserts that it is, and will be damaged, by the above-styled Registration and hereby petitions to cancel the same.

As grounds for this petition, it is alleged that:

1. CHM Associates LLC, with a principal place of business in 2-E 336 Central Park West, New York, NY 10025 (hereinafter "Registrant"), has obtained registration of the mark "POUR" in the International Class 35 for retail wine store services. The registration No. 3,277,956 was issued on August 7, 2007, alleging first use of December 6, 2006 and first use in commerce of December 6, 2006. The application was initially filed as an "intent to use" application. The filing date of the Application was March 21, 2006.

2. Petitioner has commenced the use of the mark POUR as early as April 1, 2005, with the first use in commerce on August 5, 2005, and has not abandoned the use since then. Petitioner used the mark POUR in association with its wine bar services as well as the production and sale of wine bearing mark POUR. Petitioner ships wine bearing mark POUR in interstate commerce nationwide.

3. Upon Petitioner's information and belief, Registrant had actual knowledge of Petitioner's use of the mark POUR when Registrant filed its application for intent to use on March 21, 2006 and/or when it filed its statement of use on March 28, 2007. It did not actually start using the trademark until December of 2006, a year and a half after the Petitioner started using the mark POUR in trade and commerce.

4. Petitioner is continuing to use its mark POUR, and is being injured by the existence of Registration No. 3,277,956. On November 29, 2006 Petitioner filed a federal Trademark Application, Serial No. 77/052994 to protect its mark "POUR" in International Class 33 (wine) and International Class 43 (wine bars).

5. Protection was denied to the Petitioner because of the existence of Registration 3,277,956. In the refusal, the U.S. Patent and Trademark Office noted that the Petitioner's mark POUR was very highly similar to the mark POUR registered by the Registrant. Further, the U.S. Patent and Trademark Office noted that the use of the mark would be especially confusing because it was used in connection with related goods and services (i.e., wine and wine services).

6. Registrant's mark POUR, as registered in association with "retail wine store services" so resembles Petitioner's mark POUR for "wine" in IC 33 and "wine bar" in IC 43 as to be likely to cause confusion, to cause mistake, or to deceive, to the damage and injury of the Petitioner and the purchasing public. Petitioner received and continues to receive numerous inquiries from members of the public inquiring whether Petitioner opened the store in New York, confusing goods and services offered by the Registrant with those offered by the Petitioner.

7. The likelihood of confusion is further exacerbated by the fact that the font and the coloring of the mark used by the Registrant is strikingly similar to what Petitioner has been using from the start of its business.

8. As established above, there is no issue as to the priority. Petitioner's use of POUR in association with "wine" and "wine bar" services started at least a year prior to Registrant's registration of the mark and a year and a half prior to Registrant's first use of the mark.

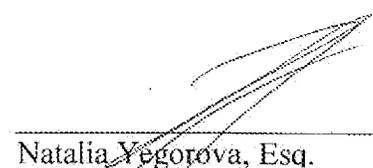
Wherefore, Petitioner prays that Registration 3,277,956 be cancelled and that its Petition be sustained in favor of Petitioner.

Petitioner appoints the firm of Black Helterline, LLP, of 1900 Fox Tower, 805

SW Broadway, Suite 1900, Portland, OR 97205, and Attorneys Natalia Yegorova and Ron Adams, of said firm, to transact all business in the United States Patent and Trademark Office in the above-identified cancellation proceeding.

Correspondence should be addressed to the above-identified firm to the attention of Natalia Yegorova, Esq.

DATED this 24th day of April, 2008.

By: 
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