

ESTTA Tracking number: **ESTTA316419**

Filing date: **11/12/2009**

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 | Two Hands Wines Pty. Ltd. | | |
| Entity | limited liability company | Citizenship | Australia |
| Address | C/O Tilbrook Rasheed, 205 Greenhill Rd. Eastwood, SA 5063 AUSTRALIA | | |

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|----------------------|--|--|--|
| Attorney information | William J. Sapone Coleman Sudol Sapone P.C. 714 Colorado Avenue Bridgeport, CT 06605 UNITED STATES wsapone@cssiplaw.com, wjapatent@aol.com Phone:203-366-3560 | | |
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Registration Subject to Cancellation

| | | | |
|--------------------------------|--|---------------------------------|------------|
| Registration No | 3256744 | Registration date | 06/26/2007 |
| International Registration No. | NONE | International Registration Date | NONE |
| Registrant | Infra Metal Establishment Kappelestrasse 15 FL-9492 Eschen LIECHTENSTEIN | | |

Goods/Services Subject to Cancellation

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| Class 032. All goods and services in the class are cancelled, namely: Beers; mineral and aerated waters; fruit drinks and fruit juices; syrups and other preparations for making energy drinks, sports drinks and stimulating drinks; energy drinks |
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Grounds for Cancellation

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

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|----------------------|-----------|-----------------------|------------|
| U.S. Application No. | 77522169 | Application Date | 07/15/2008 |
| Registration Date | NONE | Foreign Priority Date | NONE |
| Word Mark | APHRODITE | | |

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|---------------------|--------------------------------|
| Design Mark | <h1>APHRODITE</h1> |
| Description of Mark | NONE |
| Goods/Services | Class 033. First use: Wines |

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|-------------|---|
| Attachments | 77522169#TMSN.jpeg (1 page)(bytes) PetitionCancel.pdf (3 pages)(713834 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 | /WJS/ |
| Name | William J. Sapone |
| Date | 11/12/2009 |

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

In the matter of Trademark Registration No. 3,256,744

For the Mark: APHRODITE (Word)

Date registered: June 26, 2007

TWO HANDS WINES PTY. LTD, Petitioner

v.

INFRA METAL ESTABLISHMENT, Registrant

Commissioner for Trademarks,
P.O. Box 1451,
Alexandria, VA 22313-1451

PETITION TO CANCEL REGISTRATION NO. 3,256,744

Sir:

Petitioner, Two Hands Wines, Pty. Ltd. ("Two Hands"), an Australian limited liability company, having an address of C/O Tilbrook Rasheed, 205 Greenhill Road, Eastwood, South Australia, 5063 Australia, believes that it will be and is being damaged by the above-identified trademark registration, and hereby petitions to cancel the same on the following grounds.

1. Upon information and belief, the Registrant is Infra Metal Establishment ("Infra Metal"), a Liechtenstein limited liability company, located at Kappelestrasse 15, FL-9492 Eschen, Liechtenstein.

2. Petitioner has been in the business of making and selling alcoholic beverages, other than beers, and in particular wines for many years, the goods sold into many markets, including the United States market.

2. Petitioner is the owner of Australian Trademark Registration no. 1251954 for APHRODITE, registered from July 15, 2008, for goods in International class 33, including wines.

3. Petitioner is also the applicant for the mark APHRODITE, U.S. Trademark Application Serial No. 77/522,169, filed July 15, 2008 for goods in International class 33, specifically wines.

4. Petitioner has received a final rejection in application serial no. 77/522,169 as the Examining Attorney alleges that there is a likelihood of confusion with the registered mark APHRODITE, the subject of this petition, registered for goods in class 32, namely, beers, mineral and aerated water, fruit drinks and fruit juices, syrups and other preparations for making energy drinks, sports drinks and stimulating drinks, and energy drinks.

5. Registrant based its registration on International Registration no. 0904423 dated 10-18-06, and Registrant has not alleged any first use date in the United States.

6. Petitioner has been using the mark APHRODITE on wines sold into the United States since at least as early as August 2005, and this use establishes the Petitioner's superior rights in the mark APHRODITE in the United States for the goods for which the Petitioner seeks a Federal Trademark Registration.

7. Upon information and belief, Registrant's goods are sufficiently related to Petitioner's goods such that Registrant's continued use of the mark APHRODITE in

connection with goods listed in the registration is likely to cause confusion, mistake or to deceive as to the source or origin of Registrant's goods in that the public is likely to believe that Registrant's goods are provided by, sponsored by, approved by, licensed by or affiliated with Petitioner.

8. The continued existence on the Register of the mark APHRODITE owned by Infra Metal is damaging Petitioners' right to continue use of and to register the mark APHRODITE for its goods.

PRAYER FOR RELIEF

Wherefore Petitioner believes that it will be and is being damaged by Registration no. 3,256,744 and prays for relief as follows:

A) Cancellation of U.S. Trademark Registration No. 3,256,744.

Respectfully submitted,



William J. Sapone
Attorney for Petitioner

COLEMAN SUDOL SAPONE P.C.
714 Colorado Avenue
Bridgeport, Connecticut 06605
Telephone No. (203) 366-3560
Facsimile: (203) 335-6779