

ESTTA Tracking number: **ESTTA343268**

Filing date: **04/20/2010**

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	The Unlimited/Alaska Hats & Apparel		
Entity	Partnership	Citizenship	Alaska
Composed Of:	Roger W. and Rhonda I. Zak, U.S. citizens		
Address	13428 E. Verda Drive PO Box 4102 Palmer, AK 99645-4102 UNITED STATES		

Correspondence information	Roger W. Zak Owner The Unlimited/Alaska Hats & Apparel 13428 E. Verda Drive PO Box 4102 Palmer, AK 99645-4102 UNITED STATES lureofak@mtaonline.net Phone:907-746-7925
----------------------------	---

Registration Subject to Cancellation

Registration No	3454826	Registration date	06/24/2008
Registrant	Arabica Funding, Inc. 68 South Service Road Suite 120 Melville, NY 11747 UNITED STATES		

Goods/Services Subject to Cancellation

Class 035. First Use: 2007/05/21 First Use In Commerce: 2007/05/21 All goods and services in the class are cancelled, namely: Retail Store Services in the Field of Coffee, Tea, Coffee and Tea Brewing Accessories, Food, Candy, and Beverageware Featuring a Bonus Incentive Program for Customers

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
Other	Lanham Act, 15 U.S.C. 1064 (5) and common law, first use, continual use and distinctive name, first to register in the State of Alaska

Related Proceedings	Letter of Action on Serial No. 77878326
---------------------	---

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77879326	Application Date	11/23/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CARIBREW		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/04/04 First Use In Commerce: 1997/04/23 Artificial coffee; Artificial coffee and tea; Beverages made of coffee; Caffeine-free coffee; Chicory and chicory mixtures, all for use as substitutes for coffee; Chicory based coffee substitute; Chocolate covered roasted coffee beans; Coffee; Coffee; Coffee and artificial coffee; Coffee and coffee substitutes; Coffee and tea; Coffee based beverages; Coffee beans; Coffee beverages with milk; Coffee capsules containing coffee for brewing; Coffee essences; Coffee extracts; Coffee flavored syrup used in making food beverages; Coffee pods; Coffee substitutes; Coffee substitutes; Coffee-based beverage containing milk; Coffee-based beverages; Green coffee; Ground coffee beans; Iced coffee; Instant coffee; Mixtures of coffee and chicory; Prepared coffee and coffee-based beverages; Roasted coffee beans; Sugar-coated coffee beans; Unroasted coffee		

Attachments	77879326#TMSN.jpeg (1 page)(bytes) Official Cancellation of 041910.pdf (13 pages)(4175028 bytes)
-------------	--

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	/Roger W. Zak/
Name	Roger W. Zak
Date	04/20/2010

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

Registration No. **3454826**

The Unlimited/Alaska Hat & Apparel

v.

Arabica Funding, Inc.

Cancellation No. _____

Petition to Cancel

The Unlimited/Alaska Hat & Apparel, is a partnership, located at PO Box 4102,
13428 E. Verda Drive, Palmer, Alaska, 99645-4102, United States of America.

The partners are Roger W. and Rhonda I. Zak.

Arabica Funding, Inc., 68 South Service Road, Ste. 120, Melville, NY 11747.

Its licensee is Caribou Coffee Company, Inc. (collectively “Caribou”),
of 3900 Lakebreeze Avenue, North, Brooklyn Center, MN, 55429.

The Unlimited/Alaska Hat & Apparel is filing for the cancellation of Caribrew Club,
registration number 3454826. It has caused a likelihood of confusion in registering our
distinctive trade name **Caribrew™**. Our application, serial no. 77879326, was initially
refused because of the defendant’s registration. It will also cause dilution of our
distinctive name in the market.

We own exclusive rights, by first use, continual use, and first to register according to both the Lanham Act and at common law. Under 15 U.S.C. 1064, (5), Arabica Funding, Inc., or its licensee, Caribou Coffee Company, Inc. is not able to ‘legitimately’ exercise control over this mark.

1. **Caribrew™** was first used in March 1997. This is ten years prior to the first use of Caribrew Club.

2. **Caribrew™** was registered in the Great State of Alaska for trademark protection in November 1997. See enclosure 1, Certification of Trademark Registration, State of Alaska, Department of Commerce and Economic Development.

3. **Caribrew™** has been licensed to manufacturing and marketing enterprises.

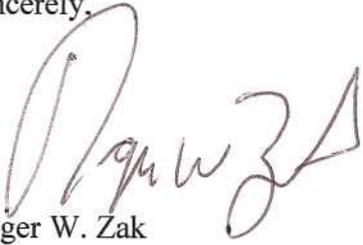
Caribrew™ was under a licensing agreement at the time that Caribrew Club was registered. Enclosures of licensing agreements with Alaska Wild Berry Products, dba All Alaskan Wholesale are offered as evidence of marketing. It is currently under license agreement to Alaska Coffee Roastery, who also uses internet commerce in marketing its products. Our domain name information is enclosed.

4. The name **Caribrew™** is a distinctive word, in that the spelling is not found in any dictionary. It is suggestive of a brewed drink, (i.e. coffee) while traveling. It is used in combination with our tag line, ‘Coffee Blended for Those on the Move’™. It is the intellectual property of Roger W. Zak, and all rights are reserved by the first use, first to register, and continued use for the last thirteen years. These rights are provisioned by the Lanham Act and common law.

5. **Caribrew™** has been and is sold to the world’s largest retailers, Wal-Mart and Fred Meyers (Kroger).

6. The label for **Caribrew™** has been progressive and is distinctly unique to the product. Enclosures of the progression of labels and cups and mugs that were or are being sold into the market are offered as evidence.
7. Registration is not a prerequisite of federal trademark protection; exclusive rights to a trademark are awarded to the first to use. We have exclusive rights to our trademark name **Caribrew™** both by common law and under the Lanham Act. Therefore, the mark Caribrew Club, registration no. 3454826 should be cancelled.

Sincerely,



Roger W. Zak

STATE OF ALASKA
 DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
 DIVISION OF BANKING, SECURITIES AND CORPORATIONS
 P.O. BOX 110808, JUNEAU, ALASKA 99811-0808
 (907)465-2530

CERTIFICATION OF TRADEMARK REGISTRATION

The commissioner of Commerce and Economic Development of the State of Alaska certifies to the following Trademark Registration in the State of Alaska.

Roger W Zak
 P O Box 871184
 Wasilla AK 99687-1184

State the name and address of applicant in the space provided at left.

Name of partners, if partnership: _____

Incorporated, if corporation, in State of: _____

Date of first trademark use by applicant or predecessor: anywhere: March 7, 1997 in this state March 7, 1997

Class number and title: 30. Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour & preparations made from cereals, bread, pastry & confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard; vinegar, sauces (condiments); spices; ice.

A facsimile of the trademark is attached.



IN TESTIMONY WHEREOF, I execute this certificate and affix the Great Seal of the State of Alaska on

November 10, 1997

Willis F. Kirkpatrick, Designee of the
 COMMISSIONER OF COMMERCE
 AND ECONOMIC DEVELOPMENT

FILE NUMBER	DATE ISSUED	DATE EXPIRES	RENEWAL DATE
2947	11/10/1997	11/10/2002	After 05/10/2002

Enclosure 1: State of Alaska, Certificate of Trademark Registration page 1 of 3

11.10.97
17785

Please do not write in this space (for Department use only)

Filed for Record
State of Alaska

NOV 10 1997

Department of Commerce
and Economic Development

APPLICATION FOR STATE TRADEMARK REGISTRATION

1. This application is for: (check one box)

- Initial Registration
- Renewal of Registration

2. Type of mark being registered (check one box)

- Trademark
- Service Mark
- Collective Mark
- Certification Mark

3. Type of business (check one box)

- Sole Proprietorship
- Corporation
- Partnership
- Limited Liability Co.
- Other (please specify) _____

4. Name of applicant (if a partnership, include names of all partners):

ROGER W. ZAK
RHONDA E. ZAK

5. Business mailing address of applicant: THE Unlimited
PO Box 871184
Wasilla AK 99687-1184

6. Name and address of party which documentation and communications should be mailed (if different from applicant): _____

7. State, province or country where business was formed: Alaska USA
Date of formation: 1984

8. Provide an exact description of the mark to be registered: (three specimens showing the mark as used in commerce must accompany this application)

Caribrew
Blended for those on the Male

There is a Caribou silhouette facing toward the word "Caribrew"
on each side of same word. The "i" in "Caribrew" is dotted with
a coffee bean silhouette.

08-565 (Rev. 12/96)

Enclosure 1: State of Alaska, Certificate of Trademark Registration page 2 of 3

9. Type of goods or services that the mark is to be used with:

Coffee packaging

10. Specify manner or mode of use of mark in connection with goods or services (check each box that applies):

- The mark is applied directly on the goods
- The mark is applied to tags, labels, packaging, or containers accompanying the goods
- The mark is shown on displays associated with the goods
- The mark is used in slogans, promotional materials, or advertising
- Other (please specify): _____

11. Class number and class description (from the attached class code list):

#30 Coffee

12. Date of first use of the mark anywhere: March 7, 1997

Date of first use of the mark in this state: March 7, 1997

13. If the person applying for registration, or a predecessor in interest has filed an application to register the mark with the US Patent and Trademark Office (USPTO), include a copy of the Certificate of Registration. If an application to the USPTO was refused, state the reasons that the application did not result in registration:

I hereby acknowledge and verify that the information set out in the forgoing application is true to the best of my knowledge, that the person applying for trademark registration is the owner of the mark, that the mark is in use, and that to my knowledge, no other person has the right to the use of the mark either in the identical form or in a near resemblance to it as to be likely, when applied to the goods or services of another person, to cause confusion or mistake or to deceive.

Shonda J. Zak Co-Owner
Signature and Title of Applicant

SUBSCRIBED AND SWORN to before me this 7 day of November, 1997.

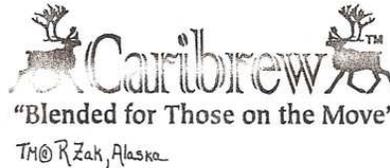
Marian James
Notary Signature
Notary Public in and for the State of Alaska
My commission expires 3/29/99
(Affix Notary Seal)



08-565 (Rev. 12/96)



THE Unlimited
 PO Box 4102
 Palmer AK 9945-4102
 907-746-7925
 Fax: 907-746-0780



February 24, 2002

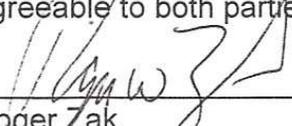
Licensing Agreement for Artwork/Trademarks

It is agreed that Roger Zak, artist, has given Alaska Wild Berry Products/All Alaskan Gifts rights to use and print on coffee packaging, cups, mugs and other promotional items, his original artwork design and trademark, individually, or in combination with lettering, backgrounds, borders and trims as Alaska Wild Berry Products/All Alaskan Gifts deems appropriate to enhance the sales to specific customers. The artwork known as "Caribrew™ Blended For Those On The Move™" under this agreement will credit the artist with his Trade Mark/Copyright signature on each print. This agreement covers the Alaskan Market.

Roger Zak retains rights to license and/or use this artwork in national and international markets.

In exchange, Alaska Wild Berry Products/All Alaskan Gifts agrees to compensate Roger Zak three and one half per cent (3.5%) of wholesale receipts for the use of this artwork initially. Royalties will increase to five per cent (5%) upon Alaska Wild Berry Products/All Alaskan Gifts obtaining full ownership of Bush Pilot Coffee™. Royalties are to be paid quarterly.

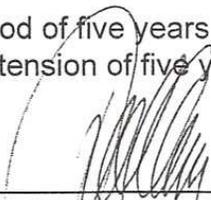
This agreement shall run for the period of five years beginning January 1, 2002, with an optional extension of five years at the sum agreeable to both parties.



 Roger Zak
 THE Unlimited

3-7-02²²

 Date



 Alaska Wild Berry Products/
 All Alaskan Gifts

2-28-02 (Dated back to 1-1-02)

 Date

If Everybody Would Help Their Neighbor, No One Would Be Without Help.

Enclosure 2: License Agreement #1

LICENSING AGREEMENT FOR ARTWORK/TRADEMARKS

It is agreed that Roger W. Zak, artist, has given Alaska Wild Berry Products, d/b/a All Alaskan Wholesale the exclusive right to use the artwork identified as "Caribrew™ Blended For Those On The Move™" on Alaska Wild Berry Products two ounce coffee bag line for five years. In consideration of the exclusive use of this artwork on Alaska Wild Berry Products coffee bags, Alaska Wild Berry Products shall pay Mr. Zak a \$1,000.00 royalty. This payment shall be made on June 1, 2003. The artwork known as "Caribrew™ Blended For Those On The Move™" under this agreement will credit the artist with his Trademark/Copyright signature on each print. This agreement covers the Alaskan market.

Roger W. Zak retains the rights to license and/or use this artwork in national and international markets.

Upon the termination of this licensing agreement, Alaska Wild Berry Products shall have the option to renew the agreement for an additional five years for a royalty agreeable to both parties upon review of the previous five years. The option for renewal shall remain in affect for 30 days from the date of termination of this licensing agreement. The agreement shall terminate on May 31, 2008.

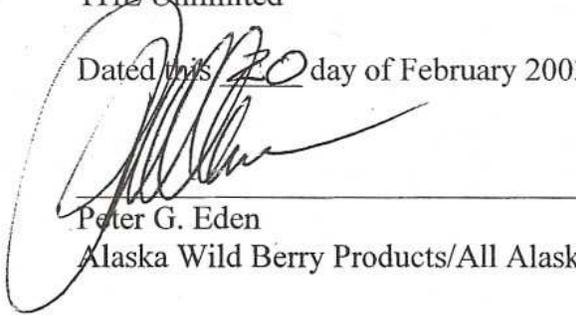
Alaska Wild Berry Products grants Roger W. Zak and THE Unlimited permission to place "Alaska Wild Berry Products" on coffee mugs, cups, and other promotional items containing "Caribrew™-Blended For Those On The Move™". THE Unlimited shall maintain this permission for the term of this agreement.

Dated this 20 day of February 2003.



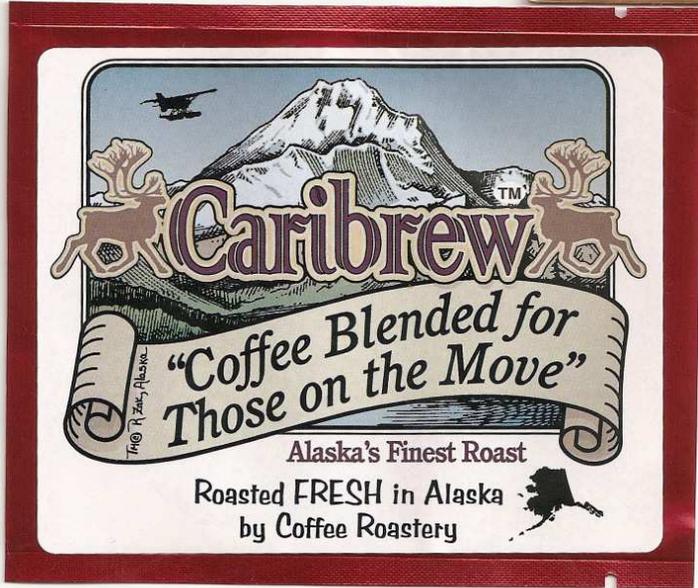
Roger W. Zak
THE Unlimited

Dated this 20 day of February 2003.



Peter G. Eden
Alaska Wild Berry Products/All Alaskan Wholesale

Enclosure 3: License Agreement #2



Enclosure 4: Progression of Labels from 1997 to 2010



Enclosure 5: Back label with barcodes.



Enclosure 6: Cups and Mugs marketed while under license agreement from 2003 to 2008

WhoIs Search Results

The data contained in GoDaddy.com, Inc.'s WHOIS database, while believed by the company to be reliable, is provided "as is" with no guarantee or warranties regarding its accuracy. This information is provided for the sole purpose of assisting you in obtaining information about domain name registration records. Any use of this data for any other purpose is expressly forbidden without the prior written permission of GoDaddy.com, Inc. By submitting an inquiry, you agree to these terms of usage and limitations of warranty. In particular, you agree not to use this data to allow, enable, or otherwise make possible, dissemination or collection of this data, in part or in its entirety, for any purpose, such as the transmission of unsolicited advertising and solicitations of any kind, including spam. You further agree not to use this data to enable high volume, automated or robotic electronic processes designed to collect or compile this data for any purpose, including mining this data for your own personal or commercial purposes.

Please note: the registrant of the domain name is specified in the "registrant" field. In most cases, GoDaddy.com, Inc. is not the registrant of domain names listed in this database.

Registrant:
The Unlimited

PO Box 4102
Palmer, Alaska 99645-4102
United States

Registered through: GoDaddy.com, Inc. (<http://www.godaddy.com>)
Domain Name: CARIBREWCOFFEE.COM
Created on: 23-Nov-09
Expires on: 23-Nov-10
Last Updated on: 23-Nov-09

Administrative Contact:
Zak, Roger lureofak@mtaonline.net
The Unlimited
PO Box 4102
Palmer, Alaska 99645-4102
United States
(907) 746-7925 Fax -- (907) 746-0780

Technical Contact:
Zak, Roger lureofak@mtaonline.net
The Unlimited
PO Box 4102
Palmer, Alaska 99645-4102
United States
(907) 746-7925 Fax -- (907) 746-0780

Domain servers in listed order:
NS13.DOMAINCONTROL.COM
NS14.DOMAINCONTROL.COM

Registry Status: clientDeleteProhibited
Registry Status: clientRenewProhibited
Registry Status: clientTransferProhibited
Registry Status: clientUpdateProhibited

[See Underlying Registry Data](#)
[Report Invalid Whois](#)

Enclosure 7: WhoIs Domain information for caribrewcoffee.com

WhoIs Search Results

The data contained in GoDaddy.com, Inc.'s WHOIS database, while believed by the company to be reliable, is provided "as is" with no guarantee or warranties regarding its accuracy. This information is provided for the sole purpose of assisting you in obtaining information about domain name registration records. Any use of this data for any other purpose is expressly forbidden without the prior written permission of GoDaddy.com, Inc. By submitting an inquiry, you agree to these terms of usage and limitations of warranty. In particular, you agree not to use this data to allow, enable, or otherwise make possible, dissemination or collection of this data, in part or in its entirety, for any purpose, such as the transmission of unsolicited advertising and solicitations of any kind, including spam. You further agree not to use this data to enable high volume, automated or robotic electronic processes designed to collect or compile this data for any purpose, including mining this data for your own personal or commercial purposes.

Please note: the registrant of the domain name is specified in the "registrant" field. In most cases, GoDaddy.com, Inc. is not the registrant of domain names listed in this database.

Registrant:
Roger Zak
PO Box 4102
Palmer, Alaska 99645-4102
United States

Registered through: GoDaddy.com, Inc. (<http://www.godaddy.com>)
Domain Name: CARIBREW.COM
Created on: 27-Nov-09
Expires on: 27-Nov-11
Last Updated on: 27-Nov-09

Administrative Contact:
Zak, Roger lureofak@mtaonline.net
PO Box 4102
Palmer, Alaska 99645-4102
United States
(907) 746-7925 Fax -- (907) 746-0780

Technical Contact:
Zak, Roger lureofak@mtaonline.net
PO Box 4102
Palmer, Alaska 99645-4102
United States
(907) 746-7925 Fax -- (907) 746-0780

Domain servers in listed order:
NS13.DOMAINCONTROL.COM
NS14.DOMAINCONTROL.COM

Registry Status: clientDeleteProhibited
Registry Status: clientRenewProhibited
Registry Status: clientTransferProhibited
Registry Status: clientUpdateProhibited

Enclosure 8: WhoIs Domain information for caribrew.com