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Filing date: **07/07/2010**

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

Proceeding	92052344
Party	Plaintiff The Unlimited/Alaska Hats & Apparel
Correspondence Address	ROGER W. ZAK THE UNLIMITED/ALASKA HATS & APPAREL 13428 E. VERDA DRIVE , PO BOX 4102 PALMER, AK 99645-4102 UNITED STATES lureofak@mtaonline.net
Submission	Motion to Amend Pleading/Amended Pleading
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Date	07/07/2010
Attachments	Amended Petition to Cancel.pdf (5 pages)(36602 bytes)

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. **92052344**

Amended 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. Our application, serial no. 77879326, was initially refused,
as stated by the Office Action of March 8, 2010 under Section 2(d) Refusal as likelihood
of confusion because of the defendant’s registration, Caribrew Club. The mere addition
of the word ‘Club’ to our mark Caribrew, which was used in commerce and registered ten
years prior in the State of Alaska, is not sufficient to overcome the likelihood of
confusion in that both are spelled and pronounced the same for closely related products,
namely our coffee and their coffee punch cards.

We own exclusive rights to the mark **Caribrew**, 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.

In the United States, priority of use is an important consideration in a cancellation proceeding because the first person to use a trademark will be deemed to have prior rights, which excludes all other subsequent users of the mark.

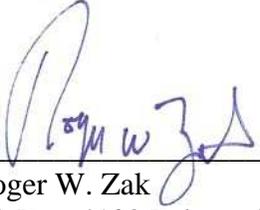
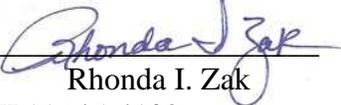
1. The mark **Caribrew** was first used in March 1997, establishing priority of use in commerce. This is ten years prior to the first use of Caribrew Club. Both at common law and under traditional Lanham Act registration procedures, exclusive rights to a trademark are awarded to the first to use it in commerce.
2. The mark **Caribrew** was registered in the Great State of Alaska for trademark protection in November 1997 as provided by the Certification of Trademark Registration, State of Alaska, Department of Commerce and Economic Development.
3. The mark **Caribrew** has been licensed to manufacturing and marketing enterprises. **Caribrew** was under a licensing agreement at the time that Caribrew Club was registered. Licensing agreements with Alaska Wild Berry Products, dba All Alaskan Wholesale can be made available. It is currently under license agreement to Alaska Coffee Roastery, who also uses internet commerce in marketing its products. Both agencies use internet retail as a means of advertising and sales. Our domain names are currently re-directed to Alaska Coffee Roastery’s domain to encourage product sales.

4. Our mark **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, our mark ‘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. The mark **Caribrew** has been and is sold to the world’s largest retailers, Wal-Mart and Fred Meyers (Kroger). It was sold to Wal-Mart and other entities under UPC number 646569362014 by Off-The-Wall, Inc. dba All Alaska Gifts and later as Alaska Wild Berry Products/All Alaska Gifts. It is currently being sold into Wal-Mart, Fred Meyer (Kroger) and other entities under UPC numbers 897820001597 (12 oz bag) and 898720001603 (2 oz bag) by Alaska Coffee Roastery (aka Coffee Roastery).
6. The labels for our mark **Caribrew** have been progressive and are distinctly unique to the product. The progression of labels and cups and mugs that were or are being sold into the market are available.
7. The mark Caribrew Club is causing a likelihood of confusion in registering our mark **Caribrew** and restriction of commercial use of our mark **Caribrew “Coffee Blended for Those on the Move”**. As stated in 15 USC 1052 (d), our mark **Caribrew** has been used in the United States, specifically Alaska, and has not been abandoned.

8. The registrant's mere addition of the word 'Club' in Caribrew Club is not sufficient to overcome the likelihood of confusion in that it is both spelled and pronounced the same as our mark **Caribrew**, which is our distinct name. Both marks are used in similar goods and services, specifically related to coffee.
9. 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, we pray for judgment in favor of cancellation of the mark Caribrew Club, registration no. 3454826.

Dated: July 7, 2010

By  
Roger W. Zak Rhonda I. Zak
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CERTIFICATION OF SERVICE

I hereby certify that the foregoing document has been served via email to Michael Tattersfield, CEO Caribou Coffee via Barbara Pearson at bpearson@cariboucoffee.com, Elizabeth C. Buckingham at buckingham.elizabeth@dorsey.com and Heather D. Redmond at Redmond.heather@dorsey.com and her assistant Deanna Bianchi-Rossi at bianchi-rossi.deanna@dorsey.com , Attorneys for the Opposer, Arabica Funding, Inc. on this 7th day of July, 2010.

I hereby certify that the foregoing document has also been served via first-class mail, postage pre-paid to Arabica Funding, Inc. c/o National Corporate Research, LTD., 68 South Service Rd, Ste. 120, Melville, NY 11747 and to Michael Tattersfield, CEO Caribou Coffee Company, Inc., 3900 Lakebreeze Ave. North, Brooklyn Center MN, 55429 on this 7th day of July, 2010


Rhonda I. Zak