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Filing date: **07/12/2010**

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

|                           |   |
|---------------------------|---|
| Proceeding                | 92052702  |
| Party                     | Plaintiff<br>Rebel Wine Co. LLC   |
| Correspondence<br>Address | J. SCOTT GERIEN<br>DICKENSON, PEATMAN & FOGARTY<br>809 COOMBS STREET<br>NAPA, CA 94559<br>UNITED STATES<br>tmdept@dpf-law.com |
| Submission                | Motion to Amend Pleading/Amended Pleading   |
| Filer's Name              | J. Scott Gerien   |
| Filer's e-mail            | tmdept@dpf-law.com  |
| Signature                 | /J. Scott Gerien/   |
| Date                      | 07/12/2010  |
| Attachments               | Amended Petition for Cancellation.PDF ( 3 pages )(168179 bytes )  |

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Certificate of Electronic Filing

I hereby certify that this correspondence is being electronically filed with the Trademark Trial and Appeal Board through the ESTTA system located at <<http://estta.uspto.gov>>.

Dated: 7/9/10

By Jaymie Kilgore  
Jaymie Kilgore

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

REBEL WINE CO. LLC,  
Petitioner,  
vs.  
ACEVES, CESAR, ACEVES, JOSE DE JESUS, and MUNOZ, DANIEL,  
Registrants.

CANCELLATION NO. 92052702  
AMENDED PETITION FOR CANCELLATION

TO THE COMMISSIONER OF TRADEMARKS:

Rebel Wine Co. LLC, a limited liability company organized under the laws of California, and located at 100 St. Helena Hwy South, P.O. Box 248, St. Helena, California 94574 ("Petitioner"), believes it is being damaged by registration of the mark EL BANDIDO NEGRO for tequila shown in Registration No. 3,340,854, registered on November 20, 2007, by Cesar Aceves, Jose de Jesus Aceves and Daniel Munoz ("Registrants"), and hereby petitions to cancel such registration.

Solely for the purpose of this proceeding, Petitioner alleges the following as grounds for cancellation:

1. Petitioner is the owner of U.S. Trademark Registration No. 3,311,926 for the mark BANDIT for wine in International Class 33. The trademark registration was issued on October 16, 2007.

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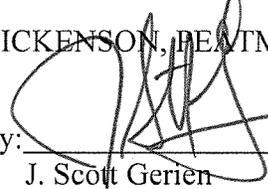
- 2. Registrants are the owners of a trademark registration for the mark EL BANDIDO NEGRO for tequila in International Class 33. The trademark registration was issued on November 20, 2007, and was assigned U.S. Trademark Registration No. 3,340,854.
- 3. Upon information and belief, Registrants have not used the EL BANDIDO NEGRO mark on tequila in U.S. commerce during the three years preceding the date of this petition to cancel and have abandoned rights in the trademark.
- 4. On the basis of the actions pleaded in the immediately preceding paragraphs, Registrants have abandoned the mark that is the subject of Registration No. 3,340,854 pursuant to 15 U.S.C. §§1127 and 1064(3)
- 5. In light of the similarity between Petitioner's BANDIT mark for wine and Registrant's EL BANDIDO NEGRO mark for tequila, Petitioner will be harmed if Registrant is allowed to continue to maintain its registration.

WHEREFORE, Petitioner prays as follows:

- 1. That this petition be sustained; and
- 2. That registration of the trademark EL BANDIDO NEGRO shown and specified in Registration No. 3,340,854, be cancelled.

Dated: 7/9/10

Respectfully submitted,  
DICKENSON, PEATMAN & FOGARTY

By:   
J. Scott Gerien  
Aleson Kent

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Attorneys for Petitioner  
Rebel Wine Co. LLC

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**PROOF OF SERVICE**

I declare that I am over the age of 18 years, employed in the County of Napa, and not a party to the within action; my business address is 809 Coombs Street, Napa, California 94559.

On July 9, 2010, I placed a copy of the following document(s):

- **AMENDED PETITION FOR CANCELLATION**

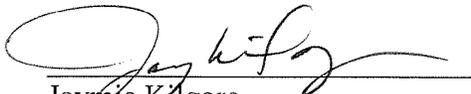
in a sealed envelope addressed as shown below and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

The persons served are as follows:

|   |  |
|---|--|
| Alejandro R. Malacara<br>Malacara & Associates<br>82 Chapel Hill Circle<br>Wynnwood Condominiums<br>San Antonio, TX 78240 | Cesar Aceves<br>Ridgecrest 59<br>Tepatitlan, Jalisco<br>45019 Mexico |
| Jose De Jesus Aceves<br>Ridgecrest 59<br>Tepatitlan, Jalisco<br>45019 Mexico  | Daniel Munoz<br>Ridgecrest 59<br>Tepatitlan, Jalisco<br>45019 Mexico |

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed July 9, 2010, at Napa, California.

  
 Jaymie Kilgore  
 Legal Secretary