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Filing date: **12/13/2011**

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	VALGEIR T SIGURDSSON		
Entity	Individual	Citizenship	ICELAND
Address	c/o Steiner & Libo Professional Corp 433 N. Camden Avenue, Suite 730 Beverly Hills, CA 90210 UNITED STATES		

Attorney information	Neil Steiner Steiner & Libo Professional Corporation 433 N. Camden Drive, Ste. 730 Beverly Hills, CA 90210 UNITED STATES steinlibo@aol.com Phone: 310 273 7778
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Registrations Subject to Cancellation

Registration No	1790599	Registration date	08/31/1993
Registrant	Consolidated European Brands Ltd. 17 Landsdowne Road Croydon, CRO 2BX UNITED KINGDOM		

Goods/Services Subject to Cancellation

Class 033. First Use: 1979/00/00 First Use In Commerce: 1989/09/00
All goods and services in the class are cancelled, namely: vodka

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l. Fraud</i>		808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)	
Abandonment		Trademark Act section 14	
Registration No	3322442	Registration date	10/30/2007
International Registration No.	NONE	International Registration Date	NONE
Registrant	Consolidated European Brands Limited 35 Old Queen Street London SW1H 9JD, UNITED KINGDOM		

Goods/Services Subject to Cancellation

Class 033.
All goods and services in the class are cancelled, namely: DISTILLED SPIRITS; VODKA;
LIQUEURS; WINE; WINE COOLERS; PREPARED ALCOHOLIC COCKTAILS; FLAVORED
BREWED MALT BEVERAGES; ALCOHOLIC BEVERAGES OF FRUIT

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>		808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)	
Abandonment		Trademark Act section 14	
Registration No	4018064	Registration date	08/30/2011
International Registration No.	NONE	International Registration Date	NONE
Registrant	Consolidated European Brands Limited 35 Old Queen Street London, SW1H9JD UNITED KINGDOM		

Goods/Services Subject to Cancellation

Class 032. All goods and services in the class are cancelled, namely: BEER, NON-ALCOHOLIC BEER, MALT BEER, LAGER, ENERGY DRINKS AND PREPARED ALCOHOLIC COCKTAIL, NAMELY, ALCOHOLIC-LEMONADE
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Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Breach of contract

Related Proceedings	An Office Action was issued in connection with Petitioner's trademark application no. 85271770
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Attachments	BLACK DEATH--NOTICE OF OPPOSITIONv7.pdf (8 pages)(96031 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	/NSS/
Name	Neil Steiner
Date	12/13/2011

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

In the matter of trademark Registration Numbers 1790599, 3322442, 4018064
For the marks BLACK DEATH and design, BLACK DEATH, and BLACK DEATH,
respectively
Dates registered August 31, 1993, October 30, 2007, and August 30, 2011, respectively

VALGEIR TOMAS SIGURDSSON,)	
)	
)	
Petitioner,)	
)	
v.)	
)	
CONSOLIDATED EUROPEAN)	
BRANDS, LTD)	
)	
Registrant.)	
)	
)	

PETITION TO CANCEL, UNDER 15 U.S.C. § 1064

Petitioner, VALGEIR TOMAS SIGURDSSON, a citizen of Iceland, using an address of Valgeir Tomas Sigurdsson, c/o Steiner & Libo Professional Corporation, 433 N. Camden Drive, Suite 730, Beverly Hills, CA 90210, believes that he has been or will be damaged by Registration Nos. 3701053, 3501419 and 4018064, and hereby petitions to cancel same.

To the best of Petitioner's knowledge, the name and address of the current owner of the registrations is CONSOLIDATED EUROPEAN BRANDS, LTD, 35 Old Queen Street, London, United Kingdom SW1H 9JD .

Description of Registrant's registrations: a trademark application was filed on September 10, 1991, for BLACK DEATH and a Skull Design, and another trademark application was filed on November 7, 2006, for the words BLACK DEATH. The BLACK DEATH and Skull Design mark subsequently registered under Section 1A on the Principal Register, in class 033 for Vodka. The word mark BLACK DEATH subsequently registered under Section 44E in class 033 for Distilled Spirits, Vodka, Liqueurs, Wine, Wine Coolers, Prepared Alcoholic Cocktails, Flavored Brewed Malt Beverages, and Alcoholic Beverages of Fruit.

More recently, Registrant filed a trademark application on June 9, 2010, for the words Black Death under Section 44E. The mark subsequently registered on August 30, 2011, under Section 44E in class 032 for Beer, Non-Alcoholic Beer, Malt Beer, Lager, Energy Drinks and Prepared Alcoholic Cocktail, namely, alcoholic-lemonade.

The above-identified Petitioner believes that he is and will be damaged by the above-identified registrations, and hereby petitions to cancel the same.

The grounds for cancellation are as follows:

GENERAL ALLEGATIONS

1. Petitioner created the Black Death brand of distilled spirits back in 1977 and first began selling it in Luxembourg. The brand grew in prominence over time, and in the 1990's Petitioner licensed the brand to Registrant's predecessor in interest who subsequently assigned those rights to Registrant.

2. Upon information and belief, Registrant stopped selling all Black Death branded products, on or before December 31, 2002, if not even sooner. Subsequently, Registrant defaulted on the Licensing Agreement and currently is in default.

3. Petitioner avers upon information and belief that despite the fact that Registrant has not sold any distilled spirits branded as BLACK DEATH for many years, Registrant has committed fraud to keep the aforementioned marks on the Trademark Register because Registrant is a hoarder of marks that it has no intent to use.

4. Registrant had a registration for BLACK DEATH in class 32 for Beers and assorted beverages (Trademark Registration No. 2760856 now Cancelled) that upon information and belief, Registrant let lapse unintentionally, even though Registrant had not sold any beers with the Black Death mark affixed to them ever.

5. Thereafter upon discovering its mistake and that it was no longer able to hoard the Black Death mark for beers since the registration had lapsed, Petitioner avers upon information and belief that Registrant filed a new application for Black Death to cover beers and related products within class 32 so that it could better control the Black Death mark it was hoarding.

6. After continuing not to receive the payments due to him by Registrant and seeing his creation ignored for many years and become abandoned, Petitioner decided to resurrect his Black Death brand, and filed a pending US Trademark application Serial No. 85271770.

7. On or about June 17, 2011, Petitioner received an initial Office Action in application Serial No. in which the Examining Attorney referenced Registration No. 1790599 for the Black Death and Skull design mark and Registration No. 3322442 for

the BLACK DEATH and concluded that Petitioner's application for the same word mark BLACK DEATH would likely cause confusion with the Registrant's Black Death marks which are not being used and have been abandoned.

8. The Examining Attorney also referenced Registrant's then pending application to register BLACK DEATH beer in Class 32 and stated that if it proceeded to registration then there would be a likelihood of confusion between that new mark (now Registration No. 4018064) and Petitioner's use of BLACK DEATH.

9. Thus the existence of Registrant's marks prevents Petitioner from being permitted to register the word mark BLACK DEATH in connection with distilled spirits in International Class 033.

10. Petitioner's inability to obtain a registration for his BLACK DEATH trademark in connection with distilled spirits in International Class 033 severely impairs his ability to move forward with his current business plans to distribute his great Black Death Spirit products once again in the United States.

ABANDONMENT

9. Petitioner asserts abandonment by Registrant as grounds for cancellation of each of the subject registrations. Upon information and belief, Registrant has ceased using for more than three consecutive years the Black Death Design Mark in connection with the good identified in its Registration No. 1790599, namely, vodka, in class 33.

10. Upon information and belief, Registrant has ceased using for more than three consecutive years the BLACK DEATH word mark in connection with the good identified

in its Registration No. 3322442, namely, distilled spirits and other drinks, in class 33.

11. Abandonment of Registration Nos. 1790599 and 3322442 is additionally evidenced by the current complete lack of any liquor product in the U.S. market bearing the BLACK DEATH word mark or the Black Death and Skull Design Mark.

FRAUD

12. Petitioner further asserts that Registration No. 3322442 was fraudulently obtained in that the original trademark application dated Nov. 11, 2006, filed by Registrant under notice of Section 1001 of Title 18 of the United States Code, stated that Registrant had a bona fide intent to use the mark in commerce in the U.S. Said statement was false in that, on information and belief, Registrant did not have a bona fide intent to use the mark in commerce in the U.S., as evidenced by said mark not having been used in commerce in the U.S. in the 3 years or anytime since then. On information and belief, said statement was made with the intent to induce authorized agents of the U.S. Patent and Trademark Office to grant said registration to Registrant, and, reasonably relying upon the truth of said false statements, the U.S. Patent and Trademark Office did, in fact, grant Registration No. 3322442 to the Registrant.

13. Petitioner further asserts that Registration No. 4018064 was fraudulently obtained in that the original trademark application dated June 9, 2010 stated that the applicant [Registrant] has had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application and/or the applicant has had a bona fide intention to exercise legitimate control over the use of the mark in commerce.

That statement was false in that, on information and belief, Registrant did not have a bona fide intent to use the mark in commerce, as evidenced by said mark not having been used in commerce at all in the prior 3 years or anytime since then. In addition, Registrant had no bona fide intention to exercise legitimate control over the use of the mark in commerce since it has been in breach of its contract with Petitioner for failure to pay Petitioner the monies owed. On information and belief, said statement was made with the intent to induce authorized agents of the U.S. Patent and Trademark Office to grant said registration to Registrant, and, reasonably relying upon the truth of said false statements, the U.S. Patent and Trademark Office did, in fact, grant Registration No. 4018064 to the Registrant.

14. Upon information and belief, Registrant has not produced, bottled or sold any Black Death product for over a decade and therefore its Section 8 and Section 9 declarations filed in 2003 in connection with Registration No. 1790599 were fraudulently filed. On information and belief, the statements made in connection with the Section 8 and Section 9 Declaration regarding continued use and renewal were made with the intent to induce authorized agents of the U.S. Patent and Trademark Office to renew the Registration to Registrant, and, reasonably relying upon the truth of said false statements, the U.S. Patent and Trademark Office did, in fact, renew Registration No. 1790599 to the Registrant.

15. Petitioner will be damaged by the continued registration of the BLACK DEATH word marks and the Black Death and Skull Design Mark by Registrant. Moreover, if Registrant is permitted to retain the registrations herein sought to be cancelled, supported by no use in connection with beverage products during at least the last 3 years, Registrant

will be afforded presumptive rights to exclusively use the BLACK DEATH word mark and the Black Death and Skull Design Mark in this fashion, thereby impairing Petitioner's current and active business plans to develop and market distilled spirits using the BLACK DEATH mark. Indeed, continuation of Registration Nos. 1790599, 3322442 and 4018064 will adversely affect Petitioner's ability to prosecute his trademark application Ser. No. 85271770 and effectuate his business plan.

PRIOR USE AND BREACH OF CONTRACT

16. Petitioner is the creator of the Black Death brand of beverage products, and accordingly was the first one to use the Black Death mark in commerce. Petitioner licensed his rights to Registrant's predecessor's in interest and to Registrant for annual payments. Those payments have not been made. Thus Registrant's recent registration number 4018064 was wrongfully filed and filed in contravention of Registrant's contract with Petitioner and of Petitioner's prior use.

17. Wherefore Petitioner avers that he is being damaged by Registration Nos. 1790599, 3322442 and 4018064 and petitions for cancellation thereof.

Dated: December 12, 2011

Respectfully submitted for Petitioner,

By:

_____/NSS/_____
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