

ESTTA Tracking number: **ESTTA524879**

Filing date: **03/05/2013**

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	Ska Brewing Co.		
Entity	Corporation	Citizenship	Colorado
Address	225 Girard St. Durango, CO 81303 UNITED STATES		

Attorney information	Jennifer D. Collins The Ollila Law Group LLC 2569 Park Lane, Suite 202 Lafayette, CO 80026 UNITED STATES jcollins@olgip.com, trademarks@olgip.com Phone:303-938-9999
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**Registrations Subject to Cancellation**

Registration No	3781138	Registration date	04/27/2010
Registrant	Duclaw Brewery, LLC 16-A Bel Air South Parkway Bel Air, MD 21015 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 032. First Use: 2006/06/15 First Use In Commerce: 2006/06/15 All goods and services in the class are cancelled, namely: Beer, ale and porter
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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	There was no bona fide use of defendant's mark in commerce prior to the filing of the use-based application for its registration under Trademark Act section 1(a), 15 U.S.C. section 1051(a)		
Registration No	4237580	Registration date	11/06/2012
Registrant	DuClaw Brewery LLC 16A Bel Air South Parkway Bel Air, MD 21015 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 032. First Use: 2011/12/01 First Use In Commerce: 2011/12/01
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All goods and services in the class are cancelled, namely: Beer, ale and porter
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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)
Priority and likelihood of confusion	Trademark Act section 2(d)
Other	There was no bona fide use of defendant's mark in commerce prior to the filing of the use-based application for its registration under Trademark Act section 1(a), 15 U.S.C. section 1051(a)

## Mark Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	EUPHORIA		
Goods/Services	beer; ale		

Attachments	22500.009 Petition for Cancellation.pdf ( 5 pages )(40421 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	/Jennifer D. Collins/
Name	Jennifer D. Collins
Date	03/05/2013



1. On September 30, 2009, DuClaw Brewery, LLC (“Respondent”) filed application Serial No. 77/837,911 for registration on the Principal Register for the term EUPHORIA for “Beer, ale and porter” in International Class 32. This application matured into Reg. No. 3,781,138 on April 27, 2010 and is the subject of this Petition (the “’138 Registration”).

2. On April 4, 2012, Respondent filed application Serial No. 85/589,315 for the term EUPHORIA for “Beer, ale and porter” in International Class 32. This application matured into Reg. No. 4,237,580 on November 6, 2012 and is also the subject of this Petition (the “’580 Registration”). The goods identified in the ’138 Registration and the ’580 Registration are referred to herein collectively as the “Respondent’s Goods.”

3. Upon information and belief, Respondent is a Maryland corporation with a business address of 16-A Bel Air South Parkway, Bel Air, MD 21015.

4. Petitioner is the owner of valid and enforceable common law rights in the mark EUPHORIA. Since at least as early as November 14, 2005, Petitioner has used the mark EUPHORIA in commerce in connection with beer and ale. Petitioner sells EUPHORIA beer in its brewery located in Durango, Colorado in southwestern Colorado, as well as through distributors and retailers throughout the country. Petitioner has invested a great deal of time and money in promoting Petitioner’s EUPHORIA beer, and is continuing to spend substantial amounts of time and money in the promotion of the same. Through such promotion and use by Petitioner, the EUPHORIA mark is widely indicated as an indicator of source for Petitioner’s beer among consumers both inside and outside of Colorado, and represents valuable and substantial goodwill of Petitioner in its business. Petitioner’s goods, beer and ale, are referred to herein as “Petitioner’s Goods.”

5. Petitioner has acquired common law rights in the mark EUPHORIA having adopted and continuously used the mark in commerce in connection with beer and ale since at least November 14, 2005, four years prior to the application date of the '138 Registration and seven years prior to the application date of the '580 Registration. Thus, Petitioner has priority rights in the EUPHORIA mark for use in connection with beer and ale, and is and will continue to be damaged by continued registration of the marks sought to be cancelled.

6. If, as the Respondent contends, Petitioner's EUPHORIA mark so resembles Respondent's EUPHORIA and EUFORIA marks due to the identity and near identity of the respective marks, as to be likely, when applied to Respondent's Goods – which are identical to Petitioner's Goods – to cause confusion, then Petitioner will be damaged by Respondent's Registration Nos. 3,781,138 and 4,237,580 and said registrations should be cancelled because Petitioner has priority of use.

7. Upon information and belief, there was no bona fide use of Respondent's mark EUPHORIA in commerce prior to the filing of the use-based application under Trademark Act § 1(a) for the '138 Registration filed on September 30, 2009.

8. Upon information and belief, there was no bona fide use of Respondent's mark EUFORIA in commerce prior to the filing of the use-based application under Trademark Act § 1(a) for the '580 Registration filed on April 4, 2012.

9. Upon information and belief, Respondent committed fraud in the procurement of the '138 Registration or during the prosecution of its application by knowingly submitting a specimen of use that had not been used in interstate commerce with the intent to deceive the USPTO, or with a reckless disregard for the truth.

10. Upon information and belief, Respondent committed fraud in the procurement of the '580 Registration or during the prosecution of its application by knowingly submitting a specimen of use that had not been used in interstate commerce with the intent to deceive the USPTO, or a reckless disregard for the truth.

11. Upon information and belief, Respondent has abandoned the mark EUPHORIA due to nonuse, and does not intend to resume use of the mark.

WHEREFORE, Petitioner believes that it is and will continue to be damaged by registration of Respondent's marks and respectfully prays that Registration Nos. 3,781,138 and 4,237,580 be cancelled, and that this petition be sustained in favor of Petitioner.

Dated: March 5, 2013

Respectfully submitted,

THE OLLILA LAW GROUP LLC  
Attorneys for Ska Brewing Co.

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Filed Electronically via ESSTA.

**CERTIFICATE OF SERVICE**

I do hereby certify that on this 5th day of March 2013, a true and correct copy of the above and foregoing CONSOLIDATED PETITION FOR CANCELLATION was sent via first class mail delivery to:

DuClaw Brewery, LLC  
16-A Bel Air South Parkway  
Bel Air, MD 21015

With a courtesy copy sent via first class mail delivery to:

George S. Robinson, IV  
Robinson Robinson LLC  
139 N. Main Street, Suite 101  
Bel Air, MD 21014

THE OLLILA LAW GROUP LLC  
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