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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	Azumi Limited		
Entity	Limited Company	Citizenship	United Kingdom
Address	150 Aldersgate Street London, EC1A 4AB UNITED KINGDOM		

Attorney information	Neda Lajevardi Lott & Fischer, PL 355 Alhambra Circle Suite 1100 Coral Gables, FL 33134 UNITED STATES nlajevardi@lottfischer.com, ljlott@lottfischer.com, sdonna@lottfischer.com Phone:305-448-7089
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### Registration Subject to Cancellation

Registration No	4280221	Registration date	01/22/2013
Registrant	J. Cole Harris Inc. 87 Woodville Rd. Falmouth, ME 04105 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 032. First Use: 2012/06/15 First Use In Commerce: 2012/06/15 All goods and services in the class are cancelled, namely: carbonated soft drinks
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### Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2534592	Application Date	06/29/1999
Registration Date	01/29/2002	Foreign Priority Date	NONE
Word Mark	ZUMA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1989/11/20 First Use In Commerce: 1989/11/20		

	restaurant services		
U.S. Registration No.	3546980	Application Date	11/21/2005
Registration Date	12/16/2008	Foreign Priority Date	NONE
Word Mark	ZUMA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: Sake and Shochu		
Attachments	79021124#TMSN.jpeg ( 1 page )( bytes ) Petition to Cancel XUMMA.pdf ( 4 pages )(253969 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 Overnight Courier on this date.

Signature	/Neda Lajevardi/
Name	Neda Lajevardi
Date	04/01/2013

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

**Azumi Limited**, a United Kingdom limited company,  
Petitioner,

v.

**J. Cole Harris, Inc.**, a Maine corporation,  
Registrant.

Cancellation No.: \_\_\_\_\_

**PETITION TO CANCEL**  
Registration No. 4,280,221  
Issued: January 22, 2013  
Mark: **XUMMA**

**PETITION TO CANCEL**

Pursuant to 15 U.S.C. § 1064, 37 C.F.R. § 2.111(b), and TBMP §§ 303 and 307, Petitioner, Azumi Limited (“Petitioner”), a limited company organized and existing under the laws of the United Kingdom, located and doing business at 150 Aldersgate Street, London, United Kingdom EC1A 4AB, believes that it is or will be damaged by United States Trademark Registration No. 4,280,221, and hereby petitions to cancel same.

As grounds for this Petition, Petitioner alleges as follows:

1. According to the electronic records of the United States Patent and Trademark Office (“PTO”), Registrant, J. Cole Harris, Inc. (“Registrant”), a Maine corporation, is located at 87 Woodville Road, Falmouth, Maine 04105, and is the record owner of U.S. Trademark Registration No. 4,280,221 for the mark **XUMMA**, which registration issued on the Principal Register on January 22, 2013, and which covers “carbonated soft drinks” in International Class 32.

2. Petitioner is the owner of, and has long used, the mark **ZUMA**. Petitioner holds two federal trademark registrations for **ZUMA**: Registration No. 2,534,592 for “restaurant services” and Registration No. 3,546,980 for “sake and shochu.” Petitioner’s

federal trademark registration for **ZUMA** in connection with “restaurant services” is incontestable under 15 U.S.C. § 1065.

3. Petitioner is also the owner of a federal trademark application for **ZUMA** (Serial No. 85/728,506) in connection with: “Clothing, namely, caps, t-shirts, polo shirts; Headgear, namely hats and caps” in International Class 25; “Beers; Syrups for beverages; Non-alcoholic cocktail bases” in International Class 32; “Alcoholic cocktail mixes” in International Class 33; and “Takeaway services, snack bar services” in International Class 43.

4. Upon information and belief, Petitioner’s use of its **ZUMA** mark, in connection with “restaurant services” and “sake and shochu,” commenced before Registrant’s use of its **XUMMA** mark, and Petitioner is therefore the senior user.

5. Petitioner’s **ZUMA** mark is a well-known and distinctive trademark which has been used since at least as early as 1989 in connection with “restaurant services.” Petitioner has had constructive use of the mark in connection with “sake and shochu” since at least as early as 2005 with the filing of Petitioner’s request for extension of protection of its Community Trademark Registration No. 003357613, and has had actual use of the mark in the United States in connection with “sake” since at least as early as 2010. Petitioner’s use of its mark has been valid and continuous since the time it first started using its mark. Its marks are symbolic of extensive good will and consumer recognition built by Petitioner through substantial amounts of time, resources and effort in advertising and promotion.

6. According to the records of the United States Patent and Trademark Office, Registrant did not begin using its **XUMMA** mark until June 15, 2012, long after Petitioner's use of its **ZUMA** mark began.

7. Registrant's **XUMMA** mark is confusingly similar in appearance, sound, and commercial impression to Petitioner's **ZUMA** mark. Additionally, the goods and services offered under Registrant's mark and Petitioner's mark are highly similar.

8. In view of the similarity of the parties' respective marks and the overlapping nature of the goods and services, Registrant's **XUMMA** mark so resembles Petitioner's **ZUMA** mark so as to be likely to cause consumers to be confused, mistaken, or deceived into believing that Registrant's goods originate from Petitioner or are in some way related to, associated with, approved by, or sponsored by Petitioner.

9. Accordingly, registration of Registrant's mark is prohibited by the provisions of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), in that Registrant's mark consists of or comprises a mark which so resembles a mark previously used in the United States by Petitioner in respect of related goods and services so as to be likely to cause the public to be confused, mistaken or deceived.

10. The continued registration of Registrant's mark is damaging to Petitioner because consumers are likely to attribute the source or sponsorship of Registrant's goods to Petitioner.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner prays that this Petition to Cancel be sustained and granted in favor of Petitioner and that Registration No. 4,280,221 be cancelled and removed from the Principal Register.

Date: April 1, 2013

Respectfully submitted,

**LOTT & FISCHER, PL**

/s/ Neda Lajevardi \_\_\_\_\_

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*Attorneys for Petitioner  
Azumi Limited*

Docket No. 26013-1-8840

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that the foregoing **PETITION TO CANCEL** was served upon the Registrant by delivering true and correct copies of same to Registrant and Attorney of Record for Registrant via Federal Express on April 1, 2013 as follows:

J. Cole Harris, Inc.  
87 Woodville Road  
Falmouth, Maine 04105

Roger H. Bora, Esq.  
Thompson Hine LLP  
10050 Innovation Drive, Suite 400  
Dayton, Ohio 45342-4934