

ESTTA Tracking number: **ESTTA540683**

Filing date: **05/30/2013**

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	Roy M. Taylor III		
Entity	Individual	Citizenship	UNITED STATES
Address	2007 Goshen Lane Goshen, KY 40026 UNITED STATES		

Attorney information	Jack A. Wheat STITES & HARBISON, PLLC 400 West Market Street Suite 1800 Louisville, KY 40202 UNITED STATES jwheat@stites.com, mgates@stites.com Phone:(502) 587-3400		
----------------------	---	--	--

Registration Subject to Cancellation

Registration No	4094928	Registration date	02/07/2012
Registrant	Solie III, Theodore Daniel 7801 So. 84th East Avenue Tulsa, OK 74133 UNITED STATES		

Goods/Services Subject to Cancellation

Class 032. First Use: 1896/01/30 First Use In Commerce: 1896/01/30 All goods and services in the class are cancelled, namely: Beer

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
Other	Mark was not in use as of filing date(or even ever thereafter), thus Registration was void ab initio

Attachments	LOUISVILLE-#931044-v1-PeerlessBeerCancellation.pdf(75302 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 First Class Mail on this date.

Signature	/jackawheat/
-----------	--------------

Name	Jack A. Wheat
Date	05/30/2013

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

In the matter of Registration No. 4,094,928
Date Registered: February 7, 2012
Mark: PEERLESS BEER

ROY MORRIS TAYLOR, III,)	
)	
Petitioner,)	
)	CANCELLATION NO.
v.)	
)	
THEODORE DANIEL SOLIE, III,)	<hr style="width: 200px; margin-left: auto; margin-right: 0;"/>
)	
Registrant.)	

PETITION TO CANCEL

Comes the Petitioner, Roy Morris Taylor, III , (hereafter “Taylor” or “Petitioner”) and for his Petition to Cancel the Registration of the mark PEERLESS BEER owned by Theodore Daniel Solie, III (hereafter “Solie”), Petitioner submits the following:

1. Petitioner, Roy Morris Taylor, III resides at 2007 Goshen Lane, Goshen, Kentucky 40026.
2. Based upon information and belief, Registrant, Theodore Daniel Solie, III resides or does business at 7801 South 84th East Avenue, Tulsa, Oklahoma 74133.
3. On February 29, 2008, Solie proceeded *pro se* to file with the United States Patent & Trademark Office (the “PTO”), an application to register the mark PEERLESS BEER for use on or in connection with beer.

4. Said application matured into a registration of the PEERLESS BEER mark issued by the PTO, namely Registration Number 4,094,928 (the '928 Registration), the registration which is the subject of this cancellation proceeding.

5. In the application which matured into the registration which is the subject of this cancellation proceeding, Solie represented to the PTO that the PEERLESS BEER mark sought to be registered had been in use since at least January 30, 1896.

6. Further in association with said application, Solie represented to the PTO that he or a related company or licensee was then "using the mark in commerce, on or in connection with the identified goods."

7. Based upon information and belief, neither Solie, nor any related company or licensee was engaging in any commercial use of the PEERLESS BEER mark for beer, much less any bona fide use in the ordinary course of trade at the time he represented to the PTO such use of "the mark in commerce, on or in connection with the identified goods."

8. Based on information and belief, the PEERLESS BEER mark had not been the subject of any commercial use, much less any bona fide use for beer in the ordinary course of trade since about 1955 or 1956.

9. Based on information and belief, in addition to the fact the PEERLESS BEER mark was not the subject of any bona fide use for beer in the ordinary course of trade at the time of the filing of the application which resulted in the registration which is the subject of this cancellation proceeding, neither Solie, nor any related company or licensee thereafter ever engaged in any bona fide use of the mark in the ordinary course of trade on or in connection with beer.

10. Based on information and belief, the specimen of use provided by Solie with the filing of the application was not a specimen relating to any bona fide use for beer in the ordinary course of trade at the time of the filing of said application.

11. Based on information and belief, Solie's filing was merely an attempt to revive a mark relating to a PEERLESS BEER product his late father, Theodore D. Solie, Jr., had once possibly been involved with, which product had not been commercialized in the ordinary course of trade since about 1955 or 1956.

12. Solie's representations in the application which matured into the registration which is the subject of this cancellation proceeding that he or a related company or licensee was then "using the mark in commerce, on or in connection with the identified goods" were false.

13. Solie's false representations in the application which matured into the registration which is the subject of this cancellation proceeding that he or a related company or licensee was then "using the mark in commerce, on or in connection with the identified goods" was material to the registrability of the mark; had he accurately represented to the PTO that the mark was not then in use in commerce, the PTO would not have issued said registration.

14. When Solie made the false representations in the application which matured into the registration which is the subject of this cancellation proceeding that he or a related company or licensee was then "using the mark in commerce, on or in connection with the identified goods," he knew the PEERLESS BEER mark was not then so in use.

15. When Solie made the false representations in the application which matured into the registration which is the subject of this cancellation proceeding that he or a related company or licensee was then "using the mark in commerce, on or in connection with the identified

goods,” he did so with the intent to deceive the PTO into believing the PEERLESS BEER mark was then in commercial use.

16. Regardless, because the PEERLESS BEER mark was not the subject of any bona fide use for beer in the ordinary course of trade by either Solie, or any related company or licensee at the time of the filing of the application for the registration which is the subject of this cancellation proceeding, the resulting registration was *void ab initio*.

17. On or about December 17, 2012, Petitioner filed with the PTO an application to register the mark PEERLESS for bourbon, distilled spirits, gin, rum, and vodka, which application has been assigned Serial No. 85/804629.

18. In the course of the prosecution of this application, the Trademark Examining Attorney cited the ‘928 Registration, the registration which the subject of this cancellation proceeding, as a reference which under Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d), precludes the registration sought by Petitioner on the ground that PEERLESS mark sought by Petitioner to be registered so resembles the ‘928 registered mark as to be likely, when used on or in connection with Petitioner’s goods, to cause confusion, or to cause mistake, or to deceive.

WHEREFORE, Petitioner prays that Registration No. 4,094,928 be CANCELLED.

/jackawheat/
Jack A. Wheat
STITES & HARBISON, PLLC
400 West Market Street, Suite 1800
Louisville, KY 40202
Telephone: (502) 587-3400

Mari-Elise Taube
STITES & HARBISON, PLLC
1199 N. Fairfax Street, Suite 900
Alexandria, VA 22314
Telephone: (703) 739-4900

Attorneys for Petitioner

CERTIFICATE OF SERVICE AND ELECTRONIC SUBMISSION

I hereby certify that a true and complete copy of the foregoing PETITION TO CANCEL has been served upon the Registrant by mailing said copy on this 30th day of May, 2013, via First Class Mail, postage prepaid to the Correspondent of Record, namely:

Molly D. McKay
Molly D. McKay, P.C.
2301 S. Sheridan – Suite A
Tulsa, Oklahoma 74129

/jackawheat/
One of the Attorneys for Petitioner

TA132:000TA:931044:1:LOUISVILLE