

ESTTA Tracking number: **ESTTA544203**

Filing date: **06/20/2013**

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	Lorenzo Abellan Martinez		
Entity	Individual	Citizenship	SPAIN
Address	Casa de la Hoya S/N Jumilla, Murcia, SPAIN		

Attorney information	Charles P. LaPolla Ostrolenk Faber LLP 1180 Avenue of the Americas, 7th Floor New York, NY 10036 UNITED STATES clapolla@ostrolenk.com, smcmahon@ostrolenk.com, tm@ostrolenk.com Phone:(212) 382-0700		
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Registration Subject to Cancellation

Registration No	3734588	Registration date	01/05/2010
Registrant	Diamond Estates Wines & Spirits Ltd. 29 Connell Court Toronto, M8Z5T7 CANADA		

Goods/Services Subject to Cancellation

Class 033. First Use: 2009/04/01 First Use In Commerce: 2009/06/01 All goods and services in the class are cancelled, namely: Wine

Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	4043-951 - Petition for Cancellation.pdf(101792 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	/CPL/
Name	Charles P. LaPolla
Date	06/20/2013

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

In the Matter of Registration No. 3,734,588

LORENZO ABELLÁN MARTÍNEZ,	X	
	⋮	Cancellation No.
Petitioner,	⋮	
v.	⋮	
DIAMOND ESTATES WINES & SPIRITS LTD.,	⋮	
Respondent.	⋮	
	X	

PETITION FOR CANCELLATION

Petitioner, Lorenzo Abellán Martínez, and individual citizen of Spain having an address at Casa de la Hoya S/N, Jumilla, Murcia, Spain, believes that he will be damaged by the continued existence of Registration No. 3,734,588 for the mark TAPAS And Design, issued on June 5, 2010, for “wine” in Class 33, and therefore petitions to cancel the same. As grounds for cancellation, Petitioner, by his attorneys, Ostrolenk Faber LLP, alleges as follows:

1. Lorenzo Abellán Martínez is an individual citizen of Spain with an address at Casa de la Hoya S/N, Jumilla, Murcia, Spain.
2. Upon information and belief, Respondent, Diamond Estates Wines & Spirits Ltd. is identified in U.S. Patent and Trademark Office records as the owner of U.S. Trademark Registration No. 3,734,588 for the mark TAPAS And Design for “wine” in Class 33, which issued on June 5, 2010.
3. Petitioner is a joint owner, along with Dominic Lombard and Sergio Pereletegui, of U.S. Trademark Application Serial No. 77/671,649 for the mark THE TAPAS WINE COLLECTION And Design for “grape wine, red wine, red wines, sparkling fruit wines, sparkling

grape wine, sparkling wines, sweet wines, table wines, wine, wines, wines and fortified wines, wines and liqueurs and sparkling wines” filed with the U.S. Patent and Trademark Office on February 17, 2009.

4. The U.S. Patent and Trademark Office, in an Office Action mailed on June 24, 2011, cited Registration No. 3,734,588 as grounds for refusal of registration under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

5. Upon information and belief, Respondent has discontinued use of and has failed to use as a trademark the designation TAPAS And Design as set forth in U.S. Trademark Registration No. 3,734,588 for all of the registered goods for a period of at least three consecutive years.

6. Upon information and belief, Respondent's discontinuance of use of and failure to use as a trademark the designation TAPAS And Design for all of the registered goods set forth in U.S. Trademark Registration No. 3,734,588 has been intentional and without intent to resume use as a trademark in connection with any of the registered goods.

7. Continued registration of Respondent’s mark TAPAS And Design will damage Petitioner in that Respondent’s claim of exclusive rights in the mark TAPAS And Design as reflected in U.S. Trademark Registration No. 3,734,588 may be adverse to Petitioner’s ability to use and/or register the mark THE TAPAS WINE COLLECTION And Design as set forth in application Serial No. 77/671,649.

8. By reason of the foregoing, Respondent has abandoned any and all rights in and to the mark TAPAS And Design as set forth in U.S. Trademark Registration No. 3,734,588 pursuant to §§ 14(a) and 45 of the Lanham Act, 15 U.S.C. §§ 1064(a) and 1127.

9. By reason of the foregoing, Petitioner is being damaged and will continue to be damaged by the continued registration of the mark TAPAS And Design to Respondent within the

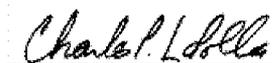
meaning of Section 14 of the Lanham Act, 15 U.S.C. § 1064.

WHEREFORE, it is respectfully requested that this cancellation action be sustained and that U.S. Trademark Registration No. 3,734,588 be cancelled.

The cancellation fee in the amount of \$300.00 for one class is filed herewith. If for any reason this amount is insufficient, it is requested that Petitioner's attorneys' deposit account No. 15-0700 be charged with any deficiency.

Dated: June 20, 2013
New York, New York

Respectfully submitted,



Charles P. LaPolla
Sean P. McMahon

OSTROLENK FABER LLP
1180 Avenue of the Americas
New York, New York 10036-8403
Tel: (212) 382-0700

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Petition for Cancellation has been served on Respondent by mailing said copy on June 20, 2013, via First Class Mail, postage prepaid to:

DIAMOND ESTATES WINES & SPIRITS LTD.
29 Connell Court
Toronto M8Z5T7
Canada



Sean P. McMahon