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Filing date: **04/17/2015**

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	Mooretown Rancheria of Maidu Indians of California		
Entity	Native American tribe	Citizenship	United States
Address	#3 Alverda Drive Oroville, CA 95966 UNITED STATES		

Attorney information	J. Scott Gerien; Christopher Passarelli Dickenson Peatman & Fogarty 1455 First St., Ste. 301 Napa, CA 94559 UNITED STATES tmltg@dpf-law.com		
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Registration Subject to Cancellation

Registration No	4617959	Registration date	10/07/2014
Registrant	Joseph B. Walsh 10605 Escobar Drive San Diego, CA 92124 UNITED STATES		

Goods/Services Subject to Cancellation

Class 032. First Use: 2011/12/31 First Use In Commerce: 2012/01/01 All goods and services in the class are cancelled, namely: Beer
Class 035. First Use: 2011/12/31 First Use In Commerce: 2012/01/01 All goods and services in the class are cancelled, namely: Retail store and online retail store services featuring beer mugs and beer related goods, clothing, hats, and towels

Grounds for Cancellation

Abandonment	Trademark Act section 14
Other	Lanham Act 45; void ab initio, lack of bona fide intent to use at time of filing, lack of use in commerce when filing statement of use

Attachments	Petition for Cancellation - VOLCANO BREWING COMPANY.pdf(487935 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	/Jaymie Kilgore/
Name	Jaymie Kilgore
Date	04/17/2015

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Certificate of Electronic Filing

I hereby certify that this correspondence is being electronically filed with the Trademark Trial and Appeal Board through the ESTTA system located at <<http://estta.uspto.gov>>.

Dated: 4/17/15

By 
Jaymie Kilgore

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

Mooretown Rancheria of Maidu Indians of California,

Petitioner,

vs.

Joseph B. Walsh, DBA Witch's Rock Industries, S.A.,

Registrant.

CANCELLATION NO.

PETITION FOR CANCELLATION

TO THE COMMISSIONER OF TRADEMARKS:

Mooretown Rancheria of Maidu Indians of California, a federally-recognized Native American tribe located at #3 Alverda Drive, Oroville, CA 95966 ("Petitioner") believes it is being and will continue to be damaged by registration of the mark VOLCANO BREWING COMPANY for "Beer" in Class 32 and for "Retail store and online retail store services featuring beer mugs and beer related goods, hats and towels" in Class 35, which is subject of U.S. Trademark Registration No. 4,617,959 (hereinafter "VOLCANO BREWING COMPANY Registration"), owned by Joseph B. Walsh, DBA Witch's Rock Industries, S.A., an individual purportedly located at 10605 Escobar Drive, San Diego CA 92124 ("Registrant"), and hereby petitions to cancel said registration.

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Solely for the purpose of this proceeding, Petitioner alleges the following as grounds for cancellation:

1. Petitioner seeks to register the mark VOLCANO MUDSLIDE SWEET STOUT as a trademark for “Beer; Stout” in Class 32 based on its intent to use the mark in commerce.

Petitioner’s application for VOLCANO MUDSLIDE SWEET STOUT, shown in Application Serial No. 86/407,317 (“Petitioner’s Application”) was filed with the United States Patent and Trademark Office on September 26, 2014.

2. Registrant’s VOLCANO BREWING COMPANY Registration issued on October 7, 2014. Registrant’s alleged first use of the mark VOLCANO BREWING COMPANY in commerce is January 1, 2012.

3. Petitioner is likely to be damaged by continued registration of Registrant’s VOLCANO BREWING COMPANY Registration, *inter alia*, because the USPTO Trademark Office Examining Attorney assigned to Petitioner’s Application has provisionally refused to allow for registration Petitioner’s Application on the grounds that, under Section 2(d) of the Lanham Act, there is a likelihood of confusion between Petitioner’s applied-for mark VOLCANO MUDSLIDE SWEET STOUT and Registrant’s VOLCANO BREWING COMPANY Registration.

4. Upon information and belief, Registrant did not use the VOLCANO BREWING COMPANY mark in commerce for the goods and services identified in the VOLCANO BREWING COMPANY Registration as of the date on which the Statement of Use was filed. As a result of Registrant’s failure to use the mark in association with the identified goods and services at the time of the filing of the Statement of Use, the VOLCANO BREWING COMPANY Registration is void *ab initio*.

5. Upon information and belief, as of the filing date of the application that matured into the VOLCANO BREWING COMPANY Registration, Registrant lacked the bona fide intent to use in U.S. commerce its VOLCANO BREWING COMPANY mark in connection with the goods and services identified in the VOLCANO BREWING COMPANY Registration, and in fact

1 never had bona fide intent to use such mark in commerce, such that the VOLCANO BREWING
2 COMPANY Registration is void *ab initio*.

3 6. Upon information and belief, in the event Registrant ever used the VOLCANO
4 BREWING COMPANY mark with the goods and services in United States commerce, Registrant
5 has ceased using the VOLCANO BREWING COMPANY mark in United States commerce for
6 the goods and/or services identified in the VOLCANO BREWING COMPANY Registration and
7 Registrant does not intend to use the VOLCANO BREWING COMPANY mark on the goods
8 and/or services identified in the VOLCANO BREWING COMPANY Registration.

9 7. Upon information and belief, Registrant has not used the VOLCANO BREWING
10 COMPANY mark in commerce in connection with the goods and services identified in the
11 VOLCANO BREWING COMPANY Registration for at least three continuous years preceding
12 the date of filing of this Petition to Cancel.

13 8. Upon information and belief, Registrant has never used the mark VOLCANO
14 BREWING COMPANY in U.S. interstate commerce in connection with the goods and services
15 identified in the VOLCANO BREWING COMPANY Registration.

16 9. Upon information and belief, Registrant has no intent to resume use in commerce
17 of the mark VOLCANO BREWING COMPANY on or in connection with the goods and services
18 identified in the VOLCANO BREWING COMPANY Registration.

19 10. Upon information and belief, due *inter alia* to Registrant's lack of use of the mark
20 VOLCANO BREWING COMPANY, the mark has lost all significance as an identifier of source
21 and/or indicator of origin among consumers.

22 11. Continued registration of the mark shown in the VOLCANO BREWING
23 COMPANY Registration will result in damage to the Petitioner pursuant to the allegations set
24 forth above, and will create a cloud on the lawful right of Petitioner to adopt and use the mark
25 VOLCANO MUDSLIDE SWEET STOUT and will prevent Petitioner from obtaining federal
26 registration of the mark in the name of Petitioner.

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12. Accordingly, Registrant's VOLCANO BREWING COMPANY mark should be declared abandoned pursuant to the Lanham Act § 45, 15 U.S.C.A. § 1127 and cancelled in accordance with Lanham Act §14, 15 U.S.C. § 1064(3).

Petitioner avers that for the reasons aforesaid, it will be damaged by the continued registration of the mark VOLCANO BREWING COMPANY which is the subject of the VOLCANO BREWING COMPANY Registration.

WHEREFORE, Petitioner prays as follows:

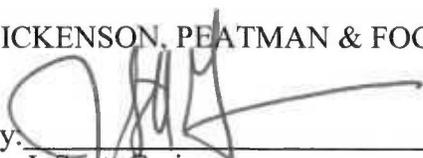
- 1. That this petition be sustained; and
- 2. That registration of the trademark VOLCANO BREWING COMPANY shown and specified in U.S. Trademark Registration No. 4,617,959 be cancelled.

Please charge Petitioner's counsel's Deposit Account #503564 the \$300 filing fee for the Petition for Cancellation, and any other fees which may be necessary to effect the filing of this petition.

Dated: 4/17/15

Respectfully submitted,

DICKENSON, PEATMAN & FOGARTY

By: 
 J. Scott Gerien
 Christopher J. Passarelli

1455 First Street, Ste. 301
Napa, California 94559
Telephone: (707) 252-7122
Facsimile: (707) 255-6876

Attorneys for Petitioner,
Mooretown Rancheria of Maidu Indians of California

PROOF OF SERVICE

I declare that I am over the age of 18 years, employed in the County of Napa, and not a party to the within action; my business address is 1455 First Street, Ste. 301, Napa, California 94559.

On April 17, 2015, I placed a copy of the following document(s):

• **PETITION FOR CANCELLATION**

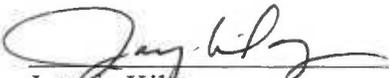
in a sealed envelope addressed as shown below and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

The persons served are as follows:

Joseph B. Walsh
DBA Witch's Rock Industries, S.A.
10605 Escobar Drive
San Diego CA 92124

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed April 17, 2015, at Napa, California.


Jaymie Kilgore
Legal Secretary

DICKENSON PEATMAN & FOGARTY