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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	One Beer At a Time, LLC		
Entity	Limited Liability Company	Citizenship	Michigan
Address	925 Cherry St Grand Rapids, MI 49506 UNITED STATES		

Correspondence information	John Di Giacomo Revision Legal, PLLC 148 E. Front St. 3rd Floor Traverse City, MI 49684 UNITED STATES john@revisionlegal.com Phone:231-714-0100		
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Registration Subject to Cancellation

Registration No	3793133	Registration date	05/25/2010
Registrant	Brew City Beer Gear, Inc. Suite 201 Milwaukee, WI 53202 UNITED STATES		

Goods/Services Subject to Cancellation

Class 032. First Use: 1996/06/30 First Use In Commerce: 1996/06/30 All goods and services in the class are cancelled, namely: Beer, ale, lager, stout and porter; Brewed malt-based alcoholic beverage in the nature of a beer; De-alcoholised beer
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Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	Petition to Cancel.pdf(81341 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	/JAD/
Name	John Di Giacomo
Date	05/12/2015

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

One Beer at a Time, LLC

Petitioner,

v.

Brew City Beer Gear, Inc.,

Registrant.

Proceeding No:

Reg. No.: 3793133

PETITION TO CANCEL

NOW COMES One Beer at a Time, LLC, by and through its attorneys Revision Legal, PLLC, and for its Petition to Cancel Brew City Beer Gear, Inc.'s registration for RED COCK BEER, which is registered under USPTO Reg. No. 3793133, states as follows:

PARTIES

Petitioner and its BIG RED COQ mark

1. One Beer at a Time, LLC ("Petitioner") is a limited liability organized under the laws of the State of Michigan with its principal place of business in Grand Rapids, Michigan.
2. Petitioner is known as Brewery Vivant, a highly regarded microbrewery located in Grand Rapids, Michigan.
3. Brewery Vivant produces high quality, popular, and well reviewed Belgian and French inspired beer, which is sold in cans and on-site at its pub, which is located inside of a remodeled funeral chapel.
4. Brewery Vivant distributes its beer in kegs in bars and restaurants in several states.

5. Brewery Vivant also distributes its canned products through retail stores in several states.
6. Among its canned products, one of Brewery Vivant's most popular beers is Big Red Coq.
7. Big Red Coq is a malt-forward red ale made with a signature Belgian yeast and Citra hops.
8. Since as early as December 20, 2010, Brewery Vivant has continuously and exclusively used BIG RED COQ as a mark.
9. Brewery Vivant's BIG RED COQ mark is inherently distinctive or, in the alternative, has acquired secondary meaning through its longstanding use in commerce.
10. Brewery Vivant filed for registration of its BIG RED COQ mark on May 6, 2013.
11. On November 12, 2014, Brewery Vivant received a final office action on its BIG RED COQ mark, which denied registration of Brewery Vivant's mark on the basis that it was likely to be confused with Registrants RED COCK BEER mark.

Registrant and its Red Cock Beer mark.

12. Brew City Beer Gear, Inc. ("Registrant") is a corporation organized under the laws of the State of Wisconsin with its principal place of business in Milwaukee, Wisconsin.
13. Brew City Beer Gear is an apparel retailer that sells beer-related apparel primarily through its three retail outlets located in Milwaukee and Greendale, Wisconsin.
14. Brew City Beer Gear also sells apparel through its website, which is located at <http://www.brewcityonline.com>.
15. Upon information and belief, in June of 1996, Brew City Beer Gear attempted to private label its own beer under the Red Cock Beer name.

16. Upon information and belief, between 1996 and 2009, Brew City Beer Gear sporadically manufactured and sold packaged beer under the RED COCK BEER mark.
17. Upon information and belief, Brew City Beer Gear's sale of beer under the RED COCK BEER mark was unsuccessful.
18. Upon information and belief, Brew City Beer Gear abandoned its sale of beer under the RED COCK BEER mark in 2009.

Petitioner's correspondence with Registrant.

19. In November of 2014 and after receiving an office action denying registration of its BIG RED COQ mark on the basis of a likelihood of confusion with Registrants RED COCK BEER mark, Petitioner attempted to contact Registrant in an attempt to either purchase the RED COCK BEER mark or negotiate a concurrent use or coexistence agreement with Registrant that would allow Petitioner's mark to proceed to registration.
20. Though Petitioner attempted to contact Registrant's attorney on numerous occasions, Registrant's attorney ignored Petitioner's requests.
21. In May 2015, and after numerous attempts to contact Registrant's attorney, Petitioner contacted Registrant.
22. Through Petitioner's contact with Registrant, Petitioner discovered that Registrant no longer sells beer under the RED COCK BEER mark and had no plans to do so in the future.
23. Petitioner has a real and personal interest in the outcome of Registrant's RED COCK BEER registration beyond that of the general public.
24. Petitioner will be harmed by Registrant's continued registration of RED COCK BEER because Registrant's continued registration of RED COCK BEER without use of that

mark or an intent to resume use of that mark has precluded Petitioner from obtaining registration of its BIG RED COQ mark.

25. Consequently, Petitioner hereby petitions the Board to cancel Registrant's RED COCK BEER mark.

PETITIONER'S GROUNDS FOR CANCELLATION

a. Registrant's trademark registration has been abandoned.

26. Petitioner restates paragraphs 1-25 as if fully restated herein.

27. Registrant has not used the RED COCK BEER mark in commerce in over three years.

28. Upon information and belief, Registrant last used RED COCK BEER as a mark in commerce in association with the sale or offering for sale of beer in 2009.

29. Registrant does not intend to resume use of RED COCK BEER as a mark in association with the sale of beer within the foreseeable future.

30. Petitioner is currently using BIG RED COQ in commerce in association with the sale of beer.

31. Registrant's continued registration of RED COCK BEER, despite Registrant's non-use of the term as a mark, has harmed Petitioner.

32. Specifically, Registrant's continued registration of RED COCK BEER, despite Registrant's non-use of the term as a mark, has precluded Petitioner from obtaining registration of Petitioner's BIG RED COQ mark.

RELIEF SOUGHT

In light of the foregoing, Petitioner respectfully requests that the Trademark Trial and Appeal Board cancel Registrant's trademark registration for RED COCK BEER (Reg. No.

Attorneys for Petitioner