

ESTTA Tracking number: **ESTTA697029**

Filing date: **09/21/2015**

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	Huneus Vintners LLC		
Entity	limited liability company	Citizenship	Delaware
Address	1601 Silverado Trail St. Helena, CA 94574 UNITED STATES		

Attorney information	Jennifer Lee Taylor Morrison & Foerster LLP 425 Market Street San Francisco, CA 94105 UNITED STATES jtaylor@mofo.com, slarson@mofo.com, cburns@mofo.com, tmdocket@mofo.com		
----------------------	---	--	--

**Registration Subject to Cancellation**

Registration No	4638402	Registration date	11/11/2014
Registrant	Villa Mari, LLC 121 East Front Street, Suite 200 Traverse City, MI 49684 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 033. First Use: 2013/11/22 First Use In Commerce: 2013/12/00 All goods and services in the class are cancelled, namely: Wine; Wines
--

**Grounds for Cancellation**

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

**Mark Cited by Petitioner as Basis for Cancellation**

U.S. Registration No.	3332325	Application Date	03/24/2006
Registration Date	11/06/2007	Foreign Priority Date	NONE
Word Mark	ILLUMINATION		

Design Mark	ILLUMINATION
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2005/06/01 First Use In Commerce: 2005/06/01 wine

Attachments	78845652#TMSN.png( bytes ) Huneeus_petition_to_cancel_ILLUMINIST.pdf(235207 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	/Jennifer Lee Taylor/
Name	Jennifer Lee Taylor
Date	09/21/2015

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

HUNEEUS VINTNERS LLC,

Petitioner,

vs.

VILLA MARI, LLC,

Respondent.

Cancellation No.: To be assigned

Registration No.: 4,638,402

Issued: Nov. 11, 2014

Mark: ILLUMINIST

**PETITION FOR CANCELLATION**

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Huneeus Vintners LLC (“Petitioner”), a Delaware limited liability company with offices at 1601 Silverado Trail, St. Helena, CA 94574, believes that it is and will continue to be injured by Registration No. 4,638,402, and hereby petitions to cancel the same.

To the best of Petitioner’s knowledge, the name and address of the current owner of the registration is Villa Mari, LLC (“Respondent”), located at 121 East Front Street, Suite 200 Traverse City, MI 49684.

The grounds for cancellation are as follows:

1. Petitioner is in the business of producing and selling wine. Petitioner produces a well-known and critically acclaimed wine that is offered under the ILLUMINATION mark. Petitioner has gained a reputation for quality for its wines, including those offered under the ILLUMINATION mark.

2. Petitioner is the owner of U.S. Registration No. 3,332,325 for ILLUMINATION for “wine” in Class 33. The application was filed on March 24, 2006 with a claimed first use date of June 1, 2005, and the mark registered on November 6, 2007. As a result of Petitioner’s filing of a Section 15 affidavit on June 18, 2013, this registration has attained incontestable status. Attached hereto as Exhibit A are true and correct copies of the registration certificate and Trademark Electronic Search System record for Registration No. 3,332,325.

3. Petitioner owns the mark covered by Registration No. 3,332,325, the filings itself, and the goodwill and reputation symbolized by the mark covered by the filings. Petitioner has continuously offered and promoted its wine under the ILLUMINATION mark since at least as early as June 1, 2005. Through this continuous and widespread use and promotion of the ILLUMINATION mark, Petitioner has also acquired common law rights in the mark. The mark is widely known and recognized by the public as identifying Petitioner’s wines.

4. Respondent filed Application Serial No. 86/127,059 for the mark ILLUMINIST for “wine; wines” in International Class 33 on November 22, 2013, which registered on November 11, 2014 under Registration No. 4,638,402. In its Statement of Use accompanying its Application Serial No. 86/127,059, Respondent alleged a first use anywhere date of November 22, 2013 and first use in commerce date of December 1, 2013.

5. Petitioner has used its ILLUMINATION mark since at least as early as June 1, 2005. Petitioner’s use of the ILLUMINATION mark was therefore substantially prior to Respondent’s claimed first use of and application to register its ILLUMINIST mark. Further, Petitioner’s Registration No. 3,332,325 issued well before Respondent’s claimed first use of and application to register its ILLUMINIST mark.

6. Petitioner’s and Respondent’s marks are virtually indistinguishable, as they are both variations on the same word. Both are nouns arising from the same verb “to illuminate.” The dominant part of both marks is the root word “illuminate,” making Respondent’s and Petitioner’s respective marks confusingly similar in appearance, sound, and commercial impression.

7. Petitioner's and Respondent's goods—wine—under their respective marks are identical, and are therefore competitive.

8. On information and belief, consumers of Respondent's wine that is offered under the ILLUMINIST are likely to consist of many of the same consumers who are familiar with the ILLUMINATION mark used in connection with Petitioner's wine.

9. On information and belief, Respondent offers and distributes the goods with which it uses its ILLUMINIST mark through channels of trade that overlap with those used by Petitioner to offer and distribute Petitioner's wines under the ILLUMINATION mark.

10. In view of the fact that Respondent's ILLUMINIST mark is highly similar in appearance, sound, meaning, connotation, and commercial impression to Petitioner's ILLUMINATION mark, that Respondent's ILLUMINIST goods are identical to Petitioner's ILLUMINATION goods, and that the customers and trade channels for Respondent's and Petitioner's goods will be the same or overlapping, Respondent's ILLUMINIST mark is likely to cause confusion with Petitioner's ILLUMINATION mark, or to cause mistake, or to deceive as to the origin, source, or sponsor of Respondent's goods. Petitioner therefore has been injured, and will continue to be injured, by the continuing registration of Respondent's ILLUMINIST mark.

WHEREFORE, Petitioner prays that Registration No. 4,638,402 be canceled.

//

//

//

//

Respectfully submitted,

Dated: September 21, 2015

By:



Jennifer Lee Taylor  
Attorney for Petitioner  
Huneus Vintners LLC

Morrison & Foerster LLP  
425 Market Street  
San Francisco, California 94105-2482  
Telephone: (415) 268-6538  
Facsimile: (415) 268-7522

# **EXHIBIT A**

**Int. Cl.: 33**

**Prior U.S. Cls.: 47 and 49**

**United States Patent and Trademark Office**

**Reg. No. 3,332,325**

Registered Nov. 6, 2007

**TRADEMARK  
PRINCIPAL REGISTER**

**ILLUMINATION**

HUNEEUS VINTNERS LLC (DELAWARE LTD  
LIAB CO)  
1601 SILVERADO TRAIL  
RUTHERFORD, CA 94573

THE MARK CONSISTS OF STANDARD CHAR-  
ACTERS WITHOUT CLAIM TO ANY PARTICULAR  
FONT, STYLE, SIZE, OR COLOR.

FOR: WINE, IN CLASS 33 (U.S. CLS. 47 AND 49).

SN 78-845,652, FILED 3-24-2006.

FIRST USE 6-1-2005; IN COMMERCE 6-1-2005.

JOHN KELLY, EXAMINING ATTORNEY



## United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)

### Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Mon Sep 21 03:21:06 EDT 2015

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [BOTTOM](#) [HELP](#)

[Logout](#) Please logout when you are done to release system resources allocated for you.

## Record 1 out of 1

[TSDR](#) [ASSIGN Status](#) [TTAB Status](#) *( Use the "Back" button of the Internet Browser to return to TESS)*

# ILLUMINATION

<b>Word Mark</b>	ILLUMINATION
<b>Goods and Services</b>	IC 033. US 047 049. G & S: wine. FIRST USE: 20050601. FIRST USE IN COMMERCE: 20050601
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	78845652
<b>Filing Date</b>	March 24, 2006
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	November 21, 2006
<b>Registration Number</b>	<b>3332325</b>
<b>Registration Date</b>	November 6, 2007
<b>Owner</b>	(REGISTRANT) Huneeus Vintners LLC LIMITED LIABILITY COMPANY DELAWARE 1601 Silverado Trail St. Helena CALIFORNIA 94574
<b>Attorney of Record</b>	Jennifer Lee Taylor
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Affidavit Text</b>	SECT 15. SECT 8 (6-YR).
<b>Live/Dead Indicator</b>	LIVE

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [TOP](#) [HELP](#)

---

[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)

## PROOF OF SERVICE BY MAIL

I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California, 94105; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on September 21, 2015, I served a copy of:

### PETITION FOR CANCELLATION

on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California, 94105, in accordance with Morrison & Foerster's ordinary business practices:

**Villa Mari, LLC  
121 East Front Street, Suite 200  
Traverse City, Michigan 49684**

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

Executed at San Francisco, California, this 21<sup>st</sup> day of September, 2015.

\_\_\_\_\_  
Grace Gabriel  
(typed)

\_\_\_\_\_  
  
(signature)