

ESTTA Tracking number: **ESTTA699717**

Filing date: **10/01/2015**

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	Bearco, LLC		
Entity	Limited Liability Company	Citizenship	Puerto Rico
Address	174 St., Minillas Industrial Park 107 Bayamon, PR 00959 UNITED STATES		

Attorney information	Cristina Arenas-Solis Ferraiuoli LLC 221 Ponce de Leon Ave., 5th floor San Juan, PR 00917 UNITED STATES trademarksca@ferraiuoli.com Phone:787-766-7000		
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Registration Subject to Cancellation

Registration No	4262446	Registration date	12/18/2012
Registrant	Vinocopia, Inc. Suite300 Richfield, MN 55423 UNITED STATES		

Goods/Services Subject to Cancellation

Class 033. First Use: 2012/08/16 First Use In Commerce: 2012/08/16 All goods and services in the class are cancelled, namely: Wine

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	86665899	Application Date	06/17/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CAPRICCIO		

Design Mark	CAPRICCIO
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 1986/01/01 First Use In Commerce: 1986/01/01 Wine

Attachments	86665899#TMSN.png(bytes) Petition to Cancel Registration of Competing Capriccio Mark 10 01 2015.pdf(28460 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	/Cristina Arenas Solis/
Name	Cristina Arenas-Solis
Date	10/01/2015

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

BEARCO, LLC

Petitioner,

v.

VINOCOPIA, INC.

Registrant

CANCELLATION NO. _____

In the matter of:

Registration No. 4262446

Trademark: CAPRICCIO

Registration Date: December 18, 2012

International Class: 033

US Classes: 047 and 049

Hon. Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

PETITION TO CANCEL

Petitioner Bearco, LLC, located at PR 174 St., Minillas Industrial Park 107, Bayamón, Puerto Rico 00959 (“Petitioner” or “Bearco”), believes that it will be damaged by the continued registration of the word mark “Capriccio”, with Registration No. 4262446 (the “Competing Mark”), owned by Vinocopia, Inc. (“Registrant”), and hereby petitions to cancel the same pursuant to Sections 2(d) and 14(3) of the Lanham Act of 1946, 15 U.S.C.A. § 1052(d) and 1064(3), respectively.

As grounds therefore, Petitioner alleges, states and prays as follows:

1. Petitioner currently produces, bottles and distributes, and for many years has produced, bottled and distributed distilled alcoholic beverages, including wine.
2. Petitioner is now using and has for many years used the trademark CAPRICCIO in connection with its wine offered in commerce in the United States.

3. On June 17, 2015, Petitioner filed Application No. 86665899 to register the trademark “CAPRICCIO” (“Petitioner’s Mark” or the “Senior Mark”) before the USPTO for wine, under International Class 033 and US Classes 047 and 049.
4. Petitioner has used the Senior Mark in commerce within the United States for the sale of wine since **January 1, 1986**. *See* Application No. 86665899.
5. Registrant’s Competing Mark was filed on November 28, 2011, and claimed **August 16, 2012** as the date for first use in commerce. The Competing Mark is registered under International Class 033 and US Classes 047 and 049, for alcoholic beverages, and more specifically, for wine.
6. The Competing Mark is registered for the same product (i.e. wine) and under the same trademark classes (i.e. IC 033 and US 047 and 049) as the Senior Mark.
6. On September 24, 2015, the USPTO issued a non-final office action, refusing registration of Petitioner’s Mark under Section 2(d) of the Lanham Act “because of a likelihood of confusion with the mark in U.S. Registration No. 4262446.” *See* Trademark Doc. No. 5.
7. There is no issue as to priority of use here. Petitioner’s rights, which date back to January 1, 1986, are superior and long prior in time to those of Registrant, which claims to have begun to use the Competing Mark in commerce more than two decades later, in August 16, 2012.
8. In view of the identical nature of the parties’ respective marks and the related nature of their respective goods, the Competing Mark conflicts with Petitioner’s Mark which was previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake or to deceive the public. `
9. Moreover, on December 12, 2014, Petitioner filed Application No. 86479401 to register before the USPTO the trademark “Capriccio Bubbly Sangrria” (the “Sangrria Trademark”),

under International Class 033 and US Classes 047 and 049, the same classes as the Competing Mark.

10. On April 1, 2015, the USPTO issued a non-final office action, refusing registration of the Sangrria Trademark under Section 2(d) of the Lanham Act on the same grounds it later refused registration of the Senior Mark, namely “because of a likelihood of confusion with the mark in U.S. Registration No. 4262446.” *See* Trademark Doc. No. 4.

11. It thus follows that the continued existence of US Registration No. 4262446 casts a cloud upon Petitioner’s right to continue to use, register and expand the use of its trademark rights, all to the great injury of Petitioner.

12. Purchasers are likely to consider the goods of Registrant advertised and promoted under the Competing Mark as emanating from or associated to Petitioner with the potential of diverting sales in favor of Registrant. Any such confusion will thus result in loss of sales for Petitioner.

13. Similarly, any defect, objection or fault found in Registrant’s goods marketed under the Competing Mark would necessarily reflect upon and seriously injure and/or dilute the reputation which Petitioner has established for its goods.

14. Petitioner will also be seriously injured if Registrant is permitted to have its certificate of registration remain on record, to the extent that it will obstruct the registration of the Sangrria Trademark and any other related application that Petitioner may file in the future.

15. Registrant, if permitted to retain registration of the Competing Mark, will retain the illegitimately acquired *prima facie* exclusive right to the mark therein for the goods listed thereto, with the potential of inflicting annoyance and harassment upon Petitioner in selling its goods and services.

WHEREFORE, Petitioner prays that Registered Trademark No. 4262446 be cancelled in its entirety.

In accordance with 37 CFR §2.6 (a)(16), the Commissioner is authorized to charge the Petition filing fee in the amount of \$300 and any other fees due to counsel's Deposit Account No.505829.

RESPECTFULLY SUBMITTED.

Dated: October 1, 2015

FERRAIUOLI LLC
221 Plaza, 5th Floor
221 Ponce de León Avenue
San Juan, PR 00917
Tel.: 787.766.7000
Fax: 787.766.7001

By: /s/Cristina Arenas Solís
Cristina Arenas Solís
carenas@ferraiuoli.com

/s/Germán Corcino Medina
Germán Corcino Medina
gcorcino@ferraiuoli.com

Attorneys for
Petitioner Bearco, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and complete copy of the foregoing Petition to Cancel was served upon Registrant, by forwarding the same via certified mail to Vinocopia, Inc. Suite 300, 6636 Cedar Ave So, Richfield, Minnesota 55423 and to its attorney of record at:

DUSTIN R. DUFAULT
DUFAULT LAW FIRM, P.C.
700 LUMBER EXCHANGE BLDG
10 S 5TH ST
MINNEAPOLIS, MINNESOTA 55402
UNITED STATES

In San Juan, Puerto Rico, this 1st day of October, 2015.

By: /s/Cristina Arenas Solís
Cristina Arenas Solís
carenas@ferraiuoli.com