

ESTTA Tracking number: **ESTTA713255**

Filing date: **12/08/2015**

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	Dogfish Head Marketing, LLC		
Entity	LIMITED LIABILITY COM-PANY	Citizenship	Delaware
Address	#6 Cannery Village Center Milton, DE 19968 UNITED STATES		

Correspondence information	John J. Dabney Esq. Dogfish Head Marketing, LLC #6 Cannery Village Center Milton, DE 19968 UNITED STATES jdabney@mwe.com, mhallerman@mwe.com, dcipit@mwe.com, hpmorris-on@mwe.com Phone:202.756.8000
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### Registrations Subject to Cancellation

Registration No	4838713	Registration date	10/27/2015
International Registration No.	NONE	International Registration Date	NONE
Registrant	0779147 B.C. Ltd. 909A West Broadway Vancouver, V5Z1G1 CANADA		

### Goods/Services Subject to Cancellation

Class 032. First Use: 0 First Use In Commerce: 0 All goods and services in the class are cancelled, namely: Beverages, namely, beer
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### Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)		
Registration No	4838714	Registration date	10/27/2015
International Registration No.	NONE	International Registration Date	NONE
Registrant	0779147 B.C. Ltd. 909A West Broadway Vancouver, V5Z1G1 CANADA		

### Goods/Services Subject to Cancellation

Class 032. First Use: 0 First Use In Commerce: 0  
 All goods and services in the class are cancelled, namely: Beverages, namely, beer

### Grounds for Cancellation

Priority and likelihood of confusion		Trademark Act section 2(d)	
Registration No	4838712	Registration date	10/27/2015
International Re- gistration No.	NONE	International Re- gistration Date	NONE
Registrant	0779147 B.C. Ltd. 909A West Broadway Vancouver, V5Z1G1 CANADA		

### Goods/Services Subject to Cancellation

Class 032. First Use: 0 First Use In Commerce: 0  
 All goods and services in the class are cancelled, namely: Beverages, namely, beer

### Grounds for Cancellation

Priority and likelihood of confusion		Trademark Act section 2(d)	
Registration No	4833958	Registration date	10/20/2015
International Re- gistration No.	NONE	International Re- gistration Date	NONE
Registrant	0779147 B.C. Ltd. 909A West Broadway Vancouver, V5Z1G1 CANADA		

### Goods/Services Subject to Cancellation

Class 032. First Use: 0 First Use In Commerce: 0  
 All goods and services in the class are cancelled, namely: Beverages, namely, beer

### 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. Registration No.	3019458	Application Date	10/05/2004
Registration Date	11/29/2005	Foreign Priority Date	NONE
Word Mark	SHELTER PALE ALE		
Design Mark	<b>SHELTER PALE ALE</b>		
Description of	NONE		

Mark	
Goods/Services	Class 032. First use: First Use: 1996/09/26 First Use In Commerce: 1996/09/26 Beer

Attachments	76614610#TMSN.png( bytes ) SHELTER Petition for Cancellation.pdf(20581 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	/John J. Dabney/
Name	John J. Dabney
Date	12/08/2015

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

DOGFISH HEAD MARKETING, LLC,  
  
Petitioner,

v.

0779147 B.C., LTD.,  
  
Registrant.

Cancellation No. \_\_\_\_\_

Registration No. 4,838,714  
Mark: SHELTER

Registration No. 4,838,713  
Mark: SHELTER RESTAURANTS

Registration No. 4,838,712  
Mark: FOOD WINE SHELTER

Registration No. 4,833,958  
Mark: SEEK SHELTER

**PETITION FOR PARTIAL CANCELLATION**

Dogfish Head Marketing, LLC (“Petitioner”) petitions to partially cancel the following registrations owned by 0779147 B.C., Ltd. (“Registrant”): Registration No. 4,838,714 for SHELTER; Registration No. 4,838,713 for SHELTER RESTAURANTS; Registration No. 4,838,712 for FOOD WINE SHELTER; and Registration No. 4,833,958 for SEEK SHELTER, all for “beverages, namely, beer” in International Class 32.

1. Petitioner is a Delaware limited liability company with a principal place of business in Milton, Delaware.
2. Registrant is a Canadian corporation with a principal place of business in Vancouver, Canada.
3. Since at least as early as September 26, 1996, Petitioner has continuously used the mark SHELTER PALE ALE for beer.

4. Petitioner has expended substantial resources to advertise and promote its goods under its SHELTER PALE ALE mark.

5. Consumers and others in the trade associate Petitioner's SHELTER PALE ALE mark as identifying goods emanating exclusively from Petitioner.

6. Petitioner owns common law trademarks for SHELTER and SHELTER PALE ALE for beer.

7. Petitioner owns Registration No. 3,019,458 for SHELTER PALE ALE for "beer" in International Class 032, which was issued over ten years ago and which has achieved incontestable status. Petitioner disclaimed rights to the term "PALE ALE" in the registration.

8. Despite Petitioner's prior trademark rights in its SHELTER PALE ALE mark, Registrant secured Registration No. 4,838,714 for SHELTER, Registration No. 4,838,713 for SHELTER RESTAURANTS, Registration No. 4,838,712 for FOOD WINE SHELTER, and Registration No. 4,833,958 for SEEK SHELTER all for, among other goods and services, "beverages, namely, beer" in International Class 032. (Collectively, the marks being petitioned for cancellation are referred to as "Registrant's SHELTER Marks.")

9. Registrant's SHELTER Marks for beer are confusingly similar in sight, sound, and meaning to Petitioner's SHELTER PALE ALE mark for beer.

10. The parties' goods—beer—are identical and are advertised in the same media and sold in the same channels of trade to the same customers.

11. Registrant's use and registration of the SHELTER Marks for "beverages, namely, beer" is likely to cause confusion, deception, and/or mistake with Petitioner and Petitioner's SHELTER PALE ALE mark.

12. Registrant's use and registration of the SHELTER Marks for beer have damaged Petitioner and Petitioner's SHELTER PALE ALE mark. Prior to the registration of Registrant's SHELTER Marks for beer, Petitioner owned the only registration for a SHELTER-formative mark for beer on the Federal Trademark Register.

Thus, Petitioner asks that Registrant's SHELTER Marks for beer be cancelled.

Respectfully submitted,

Dated: December 8, 2015

DOGFISH HEAD MARKETING, LLC

By: /s/Mary D. Hallerman  
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*Attorneys for Petitioner  
Dogfish Head Marketing, LLC*

**CERTIFICATE OF SERVICE**

Petitioner Dogfish Head Marketing, LLC, hereby certifies that a copy of this PETITION FOR PARTIAL CANCELLATION has been served on December 8, 2015 upon Registrant 0779147 B.C. Ltd., by First Class U.S. Mail at the following address of its attorney of record:

Paul A. McLean, Esq.  
Greenberg Traurig, LLP  
1900 University Avenue, Fifth Floor  
5th Floor  
East Palo Alto, CA 94303

/s/Mary D. Hallerman  
Mary D. Hallerman  
Attorney for Petitioner