

ESTTA Tracking number: **ESTTA720357**

Filing date: **01/13/2016**

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

Proceeding	92062900
Party	Plaintiff MA Hagerman Brewing Company, LLC
Correspondence Address	DAVID LUDWIG DUNLAP BENNETT & LUDWIG PLLC 211 CHURCH STREET SE LEESBURG, VA 20175 UNITED STATES ip@dbllawyers.com
Submission	Other Motions/Papers
Filer's Name	David Ludwig
Filer's e-mail	ip@dbllawyers.com
Signature	/David Ludwig/
Date	01/13/2016
Attachments	Notice of Failure of Service.pdf(515030 bytes)

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

IN THE MATTER OF Trademark Registration No. 4,269,933

For the mark: RHINOCHASER;

Date of Registration: January 1, 2013

M.A. HAGERMAN BREWING COMPANY, LLC,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92062900
)	
OSEZ VOUS? INTERNATIONAL SPIRITS, LLC,)	
)	
Respondent.)	
)	

NOTICE OF FAILURE OF SERVICE

Pursuant to 37 C.F.R. § 2.101(b), Petitioner M.A. Hagerman Brewing Company, LLC, hereby notifies the Board that the service copy mailed to Respondent Osez Vous? International Spirits, LLC was returned to sender with a note stating that the company is no longer at the address on record with the USPTO. *See Exhibit A.* This mail was received by the undersigned counsel's office on January 8, 2016.

Petitioner is unaware of any new or alternate address information for Respondent. Based on the attached corporate records, the status of the Respondent Company is Cancelled. See Exhibit B. Petitioner notes that the service copy sent to the attorney of record on the challenged application (Kristen M. Walsh of Nixon Peabody LLP) was not returned to sender.

Respectfully submitted,

M.A. Hagerman Brewing Company, LLC,
Petitioner,
By counsel,

/David Ludwig/

David Ludwig
DUNLAP BENNETT & LUDWIG PLLC
211 Church Street, SE
Leesburg, VA 20175
Tel.: (703) 777-7319
Fax.: (703) 777-3656
dludwig@dbllawyers.com

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this Petition to Cancel is being electronically filed using the Electronic System for Trademark Trials and Appeals (ESTTA) on this 13th day of January 2016.

/David Ludwig/
David Ludwig

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice has been served upon Respondent's Attorney of Record by depositing one copy thereof in the U.S. Mail, First Class, postage prepaid, on the 14th day of January 2016, addressed as follows:

Kristen M. Walsh
Nixon Peabody LLP
1300 Clinton Square
Rochester, NY 14604

/David Ludwig/
David Ludwig

EXHIBIT A

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

**IN THE MATTER OF Trademark Registration No. 4,269,933
For the mark: RHINOCHASER;
Date of Registration: January 1, 2013**

M.A. HAGERMAN BREWING COMPANY, LLC,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. _____
)	
OSEZ VOUS? INTERNATIONAL SPIRITS, LLC,)	
)	
Respondent.)	
_____)	

PETITION TO CANCEL

Pursuant to 15 U.S.C. §§ 1064, 1068, 37 C.F.R. § 2.111(b), and TBMP § 309.03(d), Petitioner M.A. Hagerman Brewing Company, LLC. (“Petitioner” or “Hagerman”), a Virginia limited liability company having its place of business at 217300 Red Rum Drive, Suite 142, Ashburn, Virginia 20174, believes that it is being and that it will be damaged by Registration No. 4,269,933 for the mark RHINOCHASER (“Respondent’s Registration”), currently owned by Osez Vous? International Spirits, LLC, a Delaware limited liability company with its principal place of business at 1313 N. Market St, Suite 5100, Wilmington, Delaware 19801, and hereby petitions to cancel said registration. Respondent’s Registration is described as follows:

Mark:	RHINOCHASER
Goods:	“Distilled Spirits” in International Class 33
Filed:	July 5, 2007
Alleged First Use:	November 1, 2011
Registered:	January 1, 2013

As grounds for cancellation, it is alleged that:

1. Petitioner is the owner of U.S. Trademark Application Serial No. 86/585,995 filed on April 2, 2015 for the mark RHINO CHASERS PILSNER & Design in connection with “Beer, ale and lager” in International Class 32 (“Petitioner’s Application”).

2. Respondent’s Registration was initially issued on January 1, 2013 to Osez Vous? International Spirits, LLC, a Delaware Limited Liability Company.

3. Upon information and belief, Respondent has abandoned the RHINOCHASER mark shown in Respondent’s Registration pursuant to Section 14(3) of the Trademark Act, 15 U.S.C. § 1064(3).

4. Upon information and belief, Respondent is not currently using the RHINOCHASER mark as shown in Respondent’s Registration in connection with “Distilled spirits.”

5. Upon information and belief, Respondent discontinued use of the RHINOCHASER mark as shown in Respondent’s Registration several years ago.

6. Indeed, the owner of Respondent’s RHINOCHASER mark, Osez Vous? International Spirits, LLC, is no longer an active and that company has been voluntarily cancelled with the Delaware Secretary of State.

7. Upon information and belief, for at least the last three consecutive years, Respondent has not used the RHINOCHASER mark as shown in Respondent’s Registration, thereby constituting *prima facie* evidence of abandonment of the RHINOCHASER mark as shown in Respondent’s Registration.

8. In view of Respondent’s non-use and abandonment of the RHINOCHASER mark as shown in U.S. Registration No. 4,269,933, Respondent is not entitled to continued registration

of the mark pursuant to Section 14(3) of the Trademark Act, 15 U.S.C. § 1064(3), and, as such, Respondent's Registration should be cancelled.

9. As Petitioner's attempt to register the mark as shown in Petitioner's Application will be impaired by the continued registration of said abandoned mark of Respondent, and as Petitioner believes that Respondent has abandoned the mark shown in U.S. Registration No. 4,269,933, said registration should be cancelled.

10. Petitioner is also the owner of, and relies upon, its common law trademark rights for the mark RHINO CHASER, used in association with the sale of "Beer, ale and lager" since at least as early as December 30, 2011.

11. Since at least as early as December 30, 2011, and before Respondent's claimed date of first use of November 1, 2012, Petitioner has continually used its RHINO CHASER mark in connection with various "Beer[s], ale[s] and lager[s]."

12. Petitioner's RHINO CHASER mark, by virtue of its substantial and continuous use since at least December 30, 2011, has acquired great value as an identification of Petitioner's goods, and acts to distinguish those goods from goods offered by others.

13. Respondent's goods (namely "Distilled spirits") are closely related to the goods sold under Petitioner's RHINO CHASERS PILSNER & Design mark.

14. Upon information and belief, Respondent's goods as identified in its registration move through similar channels of trade to the same general class of purchasers as Petitioner's goods, or did move in similar channels before the RHINOCHASER mark was abandoned.

15. The literal elements of the RHINOCHASER mark are extremely similar to the literal elements of Petitioner's RHINO CHASERS marks.

16. Continued registration of Respondent's RHINOCHASER mark is further likely to cause the public to assume erroneously that Respondent or its goods have been authorized, sponsored, or licensed by Petitioner, thereby irreparably damaging Petitioner and Petitioner's goodwill in its RHINO CHASERS marks under 15 U.S.C. § 1052(a).

17. Customers familiar with Petitioner's RHINO CHASERS marks would be likely to purchase Respondent's goods believing them to be goods originating from or sponsored by Petitioner.

18. Petitioner is likely to be damaged by continuance of the Registration on these goods because the registered RHINOCHASER mark on these items will remain a cloud on Petitioner's legal right to continue to use, develop, and expand the use of Petitioner's RHINO CHASERS marks.

Petitioner reserves the right to amend this Petition to allege other claims in the event discovery of other information indicates they are appropriate.

WHEREFORE, Petitioner prays that U.S. Registration No. 4,269,933 be canceled and that this Petitioner for Cancellation be sustained in favor of Petitioner.

Respectfully submitted,

M.A. Hagerman Brewing Company, LLC,
Petitioner,
By counsel,

/David Ludwig/

David Ludwig
DUNLAP BENNETT & LUDWIG PLLC
211 Church Street, SE
Leesburg, VA 20175
Tel.: (703) 777-7319
Fax.: (703) 777-3656
dludwig@dbllawyers.com

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this Petition to Cancel is being electronically filed using the Electronic System for Trademark Trials and Appeals (ESTTA) on this 28th day of December 2015.

/David Ludwig/
David Ludwig

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition to Cancel has been served upon Respondent and Respondent's Attorney of Record by ESTTA and also by depositing two copies thereof in the U.S. Mail, First Class, postage prepaid, on this 28th day of December 2015, addressed as follows:

Kristen M. Walsh
Nixon Peabody LLP
1300 Clinton Square
Rochester, NY 14604

Osez Vous? International Spirits, LLC
1313 N. Market Street, Suite 5100
Wilmington, DE 19801

/David Ludwig/
David Ludwig

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**Electronic System for Trademark Trials and Appeals****Receipt**

Your submission has been received by the USPTO.
The content of your submission is listed below.
You may print a copy of this receipt for your records.

ESTTA Tracking number: **ESTTA716964**Filing date: **12/28/2015**

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	MA Hagerman Brewing Company, LLC		
Entity	Limited Liability Company	Citizenship	Virginia
Address	217300 Red Rum Drive, Suite 142 Ashburn, VA 20174 UNITED STATES		

Attorney information	David Ludwig Dunlap Bennett & Ludwig PLLC 211 Church Street SE Leesburg, VA 20175 UNITED STATES ip@dbllawyers.com Phone:703-777-7319
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Registration Subject to Cancellation

Registration No	4269933	Registration date	01/01/2013
Registrant	Osez Vous? International Spirits, LLC		

Wilmington, DE 19801 UNITED STATES

Goods/Services Subject to Cancellation

Class 033. First Use: 2012/11/01 First Use In Commerce: 2012/11/01 All goods and services in the class are cancelled, namely: Distilled Spirits
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Grounds for Cancellation

Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	86585995	Application Date	04/02/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	RHINO CHASERS PILSNER		
Design Mark	86585995#TMSN.png		
Description of Mark	The mark consists of an image of a rhinoceros with a surf board on its back standing on top of the words "Rhino Chasers" in capital letters with shading; below this is a banner containing the word "Pilsner".		
Goods/Services	Class 032. First use: First Use: 2013/07/01 First Use In Commerce: 2013/07/01 Beer, ale and lager		

Attachments	86585995#TMSN.png(bytes) RHINOCHASER Cancellation Petition v2.pdf(105187 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	/David Ludwig/
Name	David Ludwig
Date	12/28/2015

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**DUNLAP
&
LUDWIG**

211 CHURCH STREET, SE
LEESBURG, VA 20175

RETURN TO SENDER
No longer at this address.

S

Osez Vous? International Spirits, LLC
1313 N. Market Street, Suite 5100
Wilmington, DE 19801



UNITED STATES POSTAGE
PITNEY BOWES
\$00.70
02 PF
0001100058 DEC 28 2015
MAILED FROM ZIP 000200175

EXHIBIT B

