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Dated: 3/4/16

By [Signature] Jaymie Kilgore

03/17/2016 DJEFFCOA 00000007 503564 3576865
01 FC:6401 300.00 DA

Adjustment date: 03/17/2016 DJEFFCOA
03/16/2016 DJEFFCOA 00000001 503564 77133612
01 FC:6401 300.00 CR
Adjustment Date: 03/17/2016 DJEFFCOA
03/16/2016 DJEFFCOA 00000001 503564 77133612
01 FC:6401 300.00 CR

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

Protege Wines, LLC,
Petitioner,
vs.
Icaria Creek Winery, Inc.,
Registrant.

CANCELLATION NO.
PETITION FOR CANCELLATION

77133612

TO THE COMMISSIONER OF TRADEMARKS:

Protege Wines, LLC, located at 1296 Hudson Avenue, St. Helena, CA 94574 ("Petitioner") believes it is being and will continue to be damaged by registration of the mark PROTEGE for "wines" in Class 33, which is subject of U.S. Trademark Registration No. 3,576,865 (hereinafter "PROTEGE Registration"), owned by Icaria Creek Winery, Inc., a California corporation located at 405 Riesling Street, Cloverdale, CA 95425 ("Registrant"), and hereby petitions to cancel said registration.

Solely for the purpose of this proceeding, Petitioner alleges the following as grounds for cancellation:

1. Petitioner seeks to register the mark PROTEGE as a trademark for "wine" in Class 33 based on its intent to use the mark in commerce. Petitioner's application for PROTEGE,

DICKENSON PEATMAN & FOGARTY



03-15-2016

1 shown in Application Serial No. 86/895,148 (“Petitioner’s Application”) was filed with the
2 United States Patent and Trademark Office on February 2, 2016.

3 2. Registrant’s PROTEGE Registration issued on February 17, 2009. Registrant’s
4 alleged first use of the mark PROTEGE in commerce is November 26, 2008.

5 3. Petitioner is likely to be damaged by continued registration of Registrant’s
6 PROTEGE Registration, *inter alia*, because, there is a possibility of likelihood of confusion
7 between Petitioner’s applied-for mark PROTEGE and Registrant’s PROTEGE Registration.

8 4. Upon information and belief, Registrant failed to use the PROTEGE mark in
9 commerce for the goods identified in the PROTEGE Registration at the time Registrant filed its
10 Section 8 declaration of current use for the PROTEGE Registration. As a result of Registrant’s
11 failure to use the mark in association with the identified goods at the time of the filing of the
12 Section 8 declaration of current use, the PROTEGE Registration is void *ab initio*.

13 5. Upon information and belief, in the event Registrant ever used the PROTEGE
14 mark in commerce with the goods identified in the in the PROTEGE Registration, Registrant has
15 ceased using the PROTEGE mark in commerce for the goods identified in the PROTEGE
16 Registration and Registrant does not intend to use the PROTEGE mark on the goods identified in
17 the PROTEGE Registration.

18 6. Upon information and belief, Registrant has not used the PROTEGE mark in
19 commerce in connection with the goods identified in the PROTEGE Registration for at least three
20 continuous years preceding the date of the filing of this Petition for Cancellation, and the
21 PROTEGE mark is therefore presumed to be abandoned.

22 7. Upon information and belief, Registrant has no intent to resume use in commerce
23 of the mark PROTEGE on or in connection with the goods identified in the PROTEGE
24 Registration.

25 8. Upon information and belief, due *inter alia* to Registrant’s lack of use of the mark
26 PROTEGE, the mark has lost all significance as an identifier of source and/or indicator of origin
27 among consumers.

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9. Accordingly, Registrant's PROTEGE mark should be declared abandoned pursuant to the Lanham Act § 45, 15 U.S.C.A. § 1127 and cancelled in accordance with Lanham Act §14, 15 U.S.C. § 1064(3).

10. Continued registration of the mark shown in the PROTEGE Registration will result in damage to the Petitioner pursuant to the allegations set forth above, and will create a cloud on the lawful right of Petitioner to adopt and use the mark PROTEGE for wine and will prevent Petitioner from obtaining federal registration of the mark in the name of Petitioner.

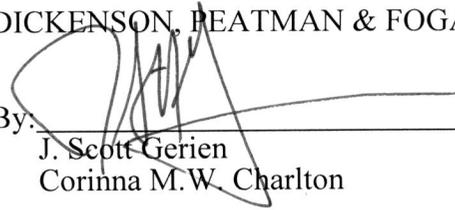
WHEREFORE, Petitioner prays as follows:

- 1. That this petition be sustained; and
- 2. That registration of the trademark PROTEGE shown and specified in U.S. Trademark Registration No. 3,576,865 be cancelled.

Please charge Petitioner's counsel's Deposit Account #503564 the \$300 filing fee for the Petition for Cancellation, and any other fees which may be necessary to effect the filing of this petition.

Dated: 3/4/16

Respectfully submitted,
DICKENSON, PEATMAN & FOGARTY

By: 
J. Scott Gerien
Corinna M.W. Charlton

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Napa, California 94559
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Attorneys for Petitioner,
Protege Wines, LLC

PROOF OF SERVICE

I declare that I am over the age of 18 years, employed in the County of Napa, and not a party to the within action; my business address is 1455 First Street, Ste. 301, Napa, California 94559.

On March 4, 2016, I placed a copy of the following document(s):

• PETITION FOR CANCELLATION

in a sealed envelope addressed as shown below and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

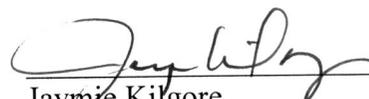
The persons served are as follows:

Icaria Creek winery, Inc.
405 Riesling Street
Cloverdale, CA 95425

John B. Dawson
Carle, Mackie, Power & Ross LLP
100 B Street Suite 400
Santa Rosa, CA 95401

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

Executed March 4, 2016, at Napa, California.


Jaymie Kilgore
Legal Secretary

DICKENSON PEATMAN & FOGARTY

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