

ESTTA Tracking number: **ESTTA739806**

Filing date: **04/13/2016**

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	Sazerac Brands		
Entity	Corporation	Citizenship	Delaware
Address	10400 Linn Station Road, Suite 300 Louisville, KY 40223 UNITED STATES		

Attorney information	Shane Rumbaugh Cooley LLP 1299 Pennsylvania Ave, NW Washington, DC 20004 UNITED STATES srumbaugh@cooley.com, trademarks@cooley.com, vbadolato@cooley.com, pwillsey@cooley.com, MOBLEYSG@cooley.com Phone:202-728-7107		
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Registration Subject to Cancellation

Registration No	4522486	Registration date	04/29/2014
Registrant	Costa Azul Winery, LLC 934 N. Coast Hwy Encinitas, CA 92024 UNITED STATES		

Goods/Services Subject to Cancellation

Class 032. First Use: 2014/02/16 First Use In Commerce: 2014/02/16
All goods and services in the class are cancelled, namely: Ale; Beer

Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	Petition to Cancel - SEA FOAM Registration.pdf(20025 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	/Shane Rumbaugh/
Name	Shane Rumbaugh
Date	04/13/2016

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

In the matter of Trademark Registration No. 4,522,486
For the Trademark SEA FOAM
Registered on April 29, 2014

Sazerac Brands, LLC,)	
)	
Petitioner,)	
)	Cancellation No.
v.)	
)	
Costa Azul Winery, LLC,)	
)	
Respondent.)	
_____)	

PETITION TO CANCEL

Sazerac Brands, LLC (“Petitioner”), a Delaware corporation having its principal place of business at 10400 Linn Station Road, Suite 300, Louisville, Kentucky 40223, believes that it has been and will continue to be damaged by the continued registration of the mark SEA FOAM, United States Registration No. 4,522,486, issued on April 29, 2014, to Costa Azul Winery, LLC (“Respondent”), and hereby petitions to cancel the same pursuant to Section 14 of the Lanham Act, 15 U.S.C. § 1064.

As grounds for its petition, Petitioner alleges as follows.

1. Petitioner, through its parent company Sazerac Company, Inc. (“Sazerac Company”), markets and sells a number of different types and brands of alcoholic beverages and distilled spirits, including vodkas, whiskeys, tequilas, liqueurs, and other spirits. Sazerac Company has marketed and sold alcoholic beverages and distilled spirits in the United States for over a century.

2. Petitioner has a bona fide intent to offer distilled spirits in connection with the SEAFOAM mark (“Petitioner’s Mark”).

3. On August 11, 2015, Petitioner filed an application with the United States Patent and Trademark office (“PTO”) to register the SEAFOAM mark in connection with “[d]istilled spirits, namely, gin” in International Class 33, as evidenced by Application Serial No. 86/720,759 (the “Application”).

4. On October 14, 2015, the PTO issued an Office Action initially refusing to register Petitioner’s Mark.

5. The PTO refused registration of Petitioner’s Mark, *inter alia*, pursuant to Section 2(d) of the Lanham Act, because the Examining Attorney concluded that Petitioner’s mark, when used on or in connection with the goods identified in the Application, is likely to cause confusion with Respondent’s registered SEA FOAM mark (Reg. No. 4,522,486).

6. United States Registration No. 4,522,486 for the mark SEA FOAM issued on April 29, 2014, in connection with “[a]le; beer” in International Class 32 (the “Cited Registration”).

7. Petitioner is informed and believes that Respondent owns the Cited Registration and that Respondent’s address is 934 N. Coast Hwy, Encinitas, California 92024.

8. The continued existence of the Cited Registration will damage Petitioner because it could prevent Petitioner from lawfully obtaining a registration for Petitioner’s Mark.

GROUND FOR CANCELLATION:

**REGISTRANT HAS ABANDONED THE MARK
IN THE CITED REGISTRATION**

9. Petitioner repeats and realleges each and every allegation set forth in Paragraphs 1 through 8 as if fully set forth herein.

10. The Cited Registration should be cancelled under 15 U.S.C. § 1064(3) due to abandonment.

11. 15 U.S.C. § 1127 provides that a mark shall be deemed to be abandoned “[w]hen its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances... ‘Use’ of a mark means the bona fide use of such mark made in the ordinary course of trade, and not made merely to reserve a right in a mark.”

12. On information and belief, Respondent does not now use the SEA FOAM mark to sell or offer for sale in U.S. commerce the goods identified in the Cited Registration.

13. Based on the results of an investigation conducted on behalf of Petitioner, on information and belief, any use of the SEA FOAM mark by Respondent in connection with the goods identified in the Cited Registration has been discontinued, and Respondent lacks the intent to resume such use.

14. Petitioner is and will continue to be harmed by the continued registration of the SEA FOAM mark in the Cited Registration.

15. Since Respondent no longer uses nor intends to resume use of the SEA FOAM mark in commerce, the mark identified in the Cited Registration has been abandoned by the Respondent and the Cited Registration should, therefore, be cancelled.

CERTIFICATE OF SERVICE

I hereby certify that I mailed the foregoing **PETITION TO CANCEL** to the listed Attorney of Record for Respondent by depositing a true and correct copy of the same with the United States Postal Service, first class mail, postage prepaid, in an envelope addressed to:

J. Scott Gerien
Dickenson, Peatman & Fogarty
1455 First Street, STE 301
Napa, California 94559-2822

Date: April 13, 2016

By: /s/ Shane Rumbaugh
Shane M. Rumbaugh