

ESTTA Tracking number: **ESTTA740178**

Filing date: **04/14/2016**

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	Winery Exchange, Inc.		
Entity	Corporation	Citizenship	CA
Address	500 Redwood Blvd., Suite 200 Novato, CA 94947 UNITED STATES		

Correspondence information	Genevieve Burch Winery Exchange, Inc. 500 Redwood Blvd., Suite 200 Novato, CA 94947 UNITED STATES trademarks@wineryexchange.com		
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Registration Subject to Cancellation

Registration No	3978489	Registration date	06/14/2011
Registrant	DONALD, IAN 179 ST JOSEPH AVE LONG BEACH, CA 90803 UNITED STATES		

Goods/Services Subject to Cancellation

Class 033. First Use: 2011/04/01 First Use In Commerce: 2011/04/01 All goods and services in the class are cancelled, namely: Distilled Spirits
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Grounds for Cancellation

False suggestion of a connection	Trademark Act section 2(a)
Fraud on the USPTO	Trademark Act section 14; In re Bose Corp., 580 F.3d 1240, 91 USPQ2D 1938 (Fed. Cir. 2009)
Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution by blurring	Trademark Act section 43(c)
Dilution by tarnishment	Trademark Act section 43(c)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Application No.	86277291	Application Date	05/09/2014
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	CHRONIC
Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 0 First Use In Commerce: 0 Mineral and aerated waters and other non-alcoholic beverages, namely, soft drinks; fruit beverages and fruit juices; syrups and concentrates for making soft drinks; non-alcoholic malt beverages; vegetable juices

U.S. Registration No.	3234639	Application Date	01/31/2005
Registration Date	04/24/2007	Foreign Priority Date	NONE

Word Mark	CHRONIC CELLARS
Design Mark	
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2006/10/26 First Use In Commerce: 2006/10/30 wine

U.S. Registration No.	4737791	Application Date	04/18/2014
Registration Date	05/19/2015	Foreign Priority Date	NONE
Word Mark	CHRONIC CELLARS		

Design Mark	CHRONIC CELLARS
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2006/10/26 First Use In Commerce: 2006/10/30 Alcoholic beverages except beers

U.S. Registration No.	4737836	Application Date	05/09/2014
Registration Date	05/19/2015	Foreign Priority Date	NONE
Word Mark	CHRONIC		
Design Mark	CHRONIC		
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2008/07/14 First Use In Commerce: 2008/07/14 Alcoholic beverages except beers		

Attachments	86277291#TMSN.png(bytes) 78557342#TMSN.png(bytes) 86256598#TMSN.png(bytes) 86277228#TMSN.png(bytes) CANCELLATION KRONIK.pdf(639720 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 Overnight Courier on this date.

Signature	/gbk/
Name	Genevieve Burch
Date	04/14/2016

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

In the Matter of Registration No. 3,978,489
For the Mark: KRONIK
Date Registered: June 14, 2011

Winery Exchange, Inc.,	:	
	:	
Petitioner,	:	
	:	
v.	:	Cancellation No. _____
	:	
Ian Donald, dba Luna Distributing,	:	
	:	
Registrant.	:	
	:	

PETITION TO CANCEL

Winery Exchange, Inc. (“Winery Exchange,” or “Petitioner”) believes that it will be damaged by the continued registration of U.S. Trademark Registration No. 3,978,489 for KRONIK (the “KRONIC Registration”), in the name of Ian Donald, dba Luna Distributing (“Registrant”) and hereby petitions to cancel the KRONIK Registration pursuant to 15 U.S.C. §§ 1052(d), 1063 and 1064(1).

As grounds for cancellation, Petitioner alleges as follows:

I. PETITIONER AND THE CHRONIC CELLARS MARKS

1. Petitioner Winery Exchange, Inc. is a California corporation with a principal place of business at 500 Redwood Boulevard, Suite 200, Novato, California 94947.
2. In 2004, Winery Exchange, through its predecessor in interest, adopted the mark CHRONIC CELLARS to be used in connection with a winery in Paso Robles, California, and in connection with producing wine under that mark.

3. Winery Exchange, through its predecessor in interest, first began using the CHRONIC CELLARS mark in connection with wine at least as early as October 26, 2006, and the CHRONIC CELLARS mark has been in continuous and widespread use throughout the United States since that date.

4. Winery Exchange owns Registration No. 3,234,639 for CHRONIC CELLARS for “wine” which is incontestable as defined in 15 U.S.C. § 1065 (the “Original CHRONIC CELLARS Registration”). Winery Exchange owns Registration No. 4,737,791 for CHRONIC CELLARS for “alcoholic beverages except beers” and Registration. No. 4,737,836 for CHRONIC for “alcoholic beverages except beers” (together with the Original CHRONIC CELLARS Registration, the “CHRONIC CELLARS Registrations”). Winery Exchange also owns a pending application (Serial No. 86/277,291) filed May 9, 2014 for CHRONIC covering “Mineral and aerated waters and other non-alcoholic beverages, namely, soft drinks; fruit beverages and fruit juices; syrups and concentrates for making soft drinks; non-alcoholic malt beverages; vegetable juices” (the “CHRONIC Application”).

5. The CHRONIC CELLARS trademark has been continuously and prominently used by Petitioner and its predecessor in interest since at least as early as October 26, 2006, and as a result, Petitioner has established valuable goodwill in the CHRONIC CELLARS mark. As a result, the public has come to know, identify, and recognize wines labeled with the CHRONIC CELLARS mark as originating with or authorized solely by Petitioner.

II. REGISTRANT AND ITS KRONIK MARK

6. On information and belief, registrant Ian Donald, DBA Luna Distributing is a California entity with its principal place of business at 1900 E Warner Ave #A, Santa Ana, California, 92750.

7. Notwithstanding Petitioner's prior and senior rights in the CHRONIC CELLARS mark and the Original CHRONIC CELLARS Registration, on June 27, 2008, Registrant filed U.S. Trademark Application Serial No. 77/510,165 for the mark KRONIK covering "distilled spirits" in International Class 33 ("Registrant's Application"). Registrant's filing basis was Section IB of the Lanham Act, 15 U.S.C. § 1051(b).

8. On April 20 2011, Registrant submitted a statement of use and a specimen (attached hereto as Exhibit A). The statement of use and specimen were accepted and Registrant's Application proceeded to registration.

9. On June 14, 2011, Registrant's Application matured into Registration No. 3,978,489 covering "distilled spirits" in International Class 33 ("KRONIK Registration").

10. On information and belief, Registrant is not using its KRONIK trademark in commerce in the U.S. and has not made any use of the KRONIK mark in the U.S. at any time. Also on information and belief, Registrant has no plans to use its KRONIK mark in commerce in the U.S.

11. On information and belief, Registrant has not used the KRONIK mark in the U.S. at any time in the last three years, resulting in a presumption of abandonment.

12. Petitioner believes that it is and will continue to be harmed by the continued registration of the KRONIK Registration.

13. Specifically, because the goods covered by the KRONIK Registration are closely related to those covered by the Original CHRONIC CELLARS Registration, consumers are likely to be confused into believing that any distilled spirits product offered by Registrant under the KRONIK mark emanates from Petitioner, or that Registrant and its distilled spirits products are affiliated with or sponsored by Petitioner, which is false. In addition, the goods covered by the KRONIK Registration are encompassed in the goods

covered in Petitioner's later registrations ("alcoholic beverages except beers"), which have a first use date prior to Registrant's priority date.

14. This concern is heightened as there has been a recent trend of wine producers selling spirits and spirit producers selling wine and using the same mark for both. For instance, The Wine Group LLC owns trademark registrations for the mark CUPCAKE for use with "spirits" (Registration No. 3,979,678) and "wine" (Reg. No. 3,776,660), both in International Class 33. Similarly, Syndicate 58/6 LLC owns a trademark registration for the mark SYNDICATE for use with "wines; spirits and liqueurs; whisky; scotch whisky" in International Class 33 (Registration No. 4,508,843). Winery Exchange itself sells, wine, beer and spirits, further increasing the likelihood of confusion.

COUNT 1

LIKELIHOOD OF CONFUSION UNDER 15 U.S.C. §§ 1052(d) and 1125(a)

15. Petitioner incorporates paragraphs 1 through 14 by reference.

16. The mark covered by the KRONIK Registration is confusingly similar in sight, sound, meaning and overall commercial impression to the CHRONIC CELLARS mark.

17. Registrant's goods as described in the KRONIK Registration are identical or closely related to the goods and services provided by Petitioner under the CHRONIC CELLARS mark and that are covered by the CHRONIC CELLARS Registrations.

18. On information and belief, Registrant's goods, as claimed in the KRONIK Registration, would be offered through the same channels of trade and to the same class of consumers as those provided under the CHRONIC CELLARS mark and CHRONIC CELLARS Registrations.

19. As a result of the foregoing, Registrant's KRONIK mark, and the registration thereof, is likely to cause confusion, mistake, or deception in the trade and among consumer

as to the ownership, source, origin, and sponsorship of Registrant's goods with those of Petitioner in violation of 15 U.S.C. §§ 1052(d) and 1125(a) and should be cancelled.

COUNT II

LIKELIHOOD OF DILUTION UNDER 15 U.S.C. § 1125(c)

20. Petitioner incorporates paragraphs 1 through 19 by reference.

21. The CHRONIC CELLARS mark is inherently and commercially distinctive, is famous among the general public, and was famous well before Registrant made any use of the KRONIK mark (indeed, Registrant has not made any such use) or the relevant filing date of the application that matured into the KRONIK Registration.

22. Given the CHRONIC CELLARS mark's considerable reputation, Registrant's use of its KRONIK mark in connection with its distilled spirits products will dilute the distinctive quality of the CHRONIC CELLARS mark in violation of 15 U.S.C. § 1125(c), and should be cancelled.

23. Deficiencies or faults in the quality of Registrant's goods are likely to reflect negatively upon, tarnish, and seriously injure the reputation established in the CHRONIC CELLARS mark and the products provided thereunder in violation of 15 U.S.C. § 1125(c), and should be cancelled.

COUNT III

FRAUD IN THE APPLICATION

A. Fraud in the Statement of Use

24. Petitioner incorporates paragraphs 1 through 23 by reference.

25. Registrant filed a statement of use on April 20, 2011 in which Registrant declared that the KRONIK "mark was first used ... in commerce at least as early as

04/01/2011, and is now in use in such commerce.” The statement of use contained the required declaration that “Applicant ... is using the mark in commerce on or in connection with the goods/services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce” and that “all statements made of his/her own knowledge are true.”

26. On information and belief, Registrant did not use its KRONIK mark in commerce prior to April 20, 2011. On information and belief, Registrant has never used its KRONIK mark in commerce.

27. On information and belief, Registrant has never obtained a “Certificate of Label Approval” from the Federal Alcohol and Tobacco Tax and Trade Bureau. A Certificate of Label Approval is required before distilled spirits may be sold in the United States.

28. On information and belief, Registrant’s false statements were made knowingly with the intent to deceive the USPTO and procure a registration to which Registrant was not entitled.

29. On information and belief, the KRONIK registration was obtained by the fraudulent filing of a statement of use and should therefore be cancelled.

B. Fraud in the Specimen

30. Registrant submitted an alleged specimen on April 20, 2011. The statement of use filed with the specimen contained the required declaration that “Applicant ... is using the mark in commerce on or in connection with the goods/services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce” and that “all statements made of his/her own knowledge are true.”

31. On information and belief, the alleged specimen of use was not in use in commerce as of April 20, 2011.

32. On information and belief, Registrant's Application is not entitled to registration because the specimen is a mock-up, and not an actual label, and thus does not show use of the mark in commerce, in violation of 37 CFR 2.56.

33. On information and belief, Registrant's false statements were made knowingly with the intent to deceive the USPTO and procure a registration to which Registrant was not entitled.

34. On information and belief, the KRONIK registration was obtained by the fraudulent filing of a specimen and should therefore be cancelled.

COUNT IV

ABANDONMENT

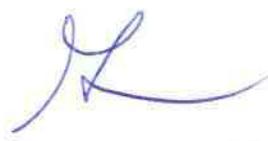
A. Abandonment

35. Petitioner incorporates paragraphs 1 through 34 by reference.

36. On information and belief, Registrant has not used its KRONIK mark in commerce in the last three years, resulting in a presumption of abandonment.

WHEREFORE, Petitioner respectfully requests that Registration No. 4,120,024 be cancelled.

Dated: 9/14, 2016

By: 
Genevieve Burch

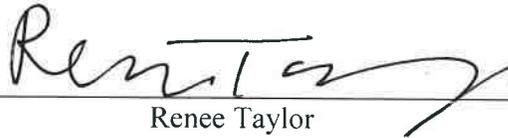
CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing PETITION TO CANCEL has been served on Registrant by mailing said copy on 4/14, 2016, via overnight courier to:

Luna Distributing
1900 E Warner Ave #A
Santa Ana, California, 92750

AND

Ian Donald
Luna Distributing
179 St Joseph Ave
Long Beach, Ca 90803



Renee Taylor

Renee Taylor

Exhibit A

Trademark/Service Mark Statement of Use (15 U.S.C. Section 1051(d))

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77510165
LAW OFFICE ASSIGNED	LAW OFFICE 106
EXTENSION OF USE	NO
MARK SECTION	
MARK	KRONIK
MISCELLANEOUS STATEMENTS SECTION	
MISCELLANEOUS STATEMENT	Free text not entered by the applicant.
MISCELLANEOUS FILE NAME(S)	<u>\\TICRS\EXPORT1\IMAGEOUT 11\775\101\77510165\xml11\SOU0003.JPG</u>
OWNER SECTION (no change)	
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	033
CURRENT IDENTIFICATION	Distilled Spirits
GOODS OR SERVICES	KEEP ALL LISTED
FIRST USE ANYWHERE DATE	04/01/2011
FIRST USE IN COMMERCE DATE	04/01/2011
SPECIMEN FILE NAME(S)	<u>\\TICRS\EXPORT1\IMAGEOUT 11\775\101\77510165\xml11\SOU0002.JPG</u>
SPECIMEN DESCRIPTION	logo
REQUEST TO DIVIDE	NO
PAYMENT SECTION	
NUMBER OF CLASSES IN USE	1
SUBTOTAL AMOUNT [ALLEGATION OF USE FEE]	100
TOTAL AMOUNT	100
SIGNATURE SECTION	
DECLARATION SIGNATURE	/Cheryl Johnson/
SIGNATORY'S NAME	Cheryl Johnson
SIGNATORY'S POSITION	Vice President
DATE SIGNED	04/20/2011
FILING INFORMATION	
SUBMIT DATE	Wed Apr 20 15:57:38 EDT 2011

TEAS STAMP

USPTO/SOU-XXX.X.XXX.XX-20
110420155738253576-775101
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e07ea608ff-CC-2493-201104
20154857996741

**Trademark/Service Mark Statement of Use
(15 U.S.C. Section 1051(d))**

To the Commissioner for Trademarks:

MARK: KRONIK
SERIAL NUMBER: 77510165

The applicant, DONALD, IAN, having an address of
179 ST JOSEPH AVE
LONG BEACH, California 90803
United States

is submitting the following allegation of use information:

For International Class 033:

Current identification: Distilled Spirits

The mark is in use in commerce on or in connection with all goods or services listed in the application or Notice of Allowance or as subsequently modified for this specific class

The mark was first used by the applicant, or the applicant's related company, licensee, or predecessor in interest at least as early as 04/01/2011, and first used in commerce at least as early as 04/01/2011, and is now in use in such commerce. The applicant is submitting one specimen for the class showing the mark as used in commerce on or in connection with any item in the class, consisting of a(n) logo.

[Specimen File1](#)

The applicant is not filing a Request to Divide with this Allegation of Use form.

MISCELLANEOUS STATEMENTS

Free text not entered by the applicant.

[Miscellaneous File1](#)

A fee payment in the amount of \$100 will be submitted with the form, representing payment for the allegation of use for 1 class.

Declaration

Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq., as amended). Applicant is the owner of the mark sought to be registered, and is using the mark in commerce on or in connection with the goods/services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce.

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements may jeopardize the validity of the form or any resulting registration, declares that he/she is properly authorized to execute this form on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Cheryl Johnson/ Date Signed: 04/20/2011

Signatory's Name: Cheryl Johnson

Signatory's Position: Vice President

RAM Sale Number: 2493

RAM Accounting Date: 04/21/2011

Serial Number: 77510165

Internet Transmission Date: Wed Apr 20 15:57:38 EDT 2011

TEAS Stamp: USPTO/SOU-XXX.X.XXX.XX-20110420155738253

576-77510165-480fd5f332e7f6aba57bb5e07ea

608ff-CC-2493-20110420154857996741

KRONIK

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AND THREE DRINKS FOR MEN.



KRONIK

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LOSS OF LIFE AND LIMBS. (2)
CONSUMPTION OF ALCOHOL BEVERAGES
MAY BE RESPONSIBLE FOR WEAK
HEALTH, ACCIDENTS AND OTHER
CONSEQUENCES.



FEE RECORD SHEET

Serial Number: 77510165



RAM Sale Number: 2493

Total Fees: \$100

RAM Accounting Date: 20110421

<u>Transaction</u>	<u>Fee Code</u>	<u>Transaction Date</u>	<u>Fee per Class</u>	<u>Number of Classes</u>	<u>Total Fee</u>
Statement of Use (SOU)	7003	20110420	\$100	1	\$100

Transaction Date: 20110420





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KRONIK

Word Mark	KRONIK
Goods and Services	IC 033. US 047 049. G & S: Distilled Spirits. FIRST USE: 20110401. FIRST USE IN COMMERCE: 20110401
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77510165
Filing Date	June 27, 2008
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	May 12, 2009
Registration Number	3978489
Registration Date	June 14, 2011
Owner	(REGISTRANT) DONALD, IAN DBA LUNA DISTRIBUTING INDIVIDUAL UNITED STATES 179 ST JOSEPH AVE LONG BEACH CALIFORNIA 90803
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead	LIVE

Indicator

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NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

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