

ESTTA Tracking number: **ESTTA770786**

Filing date: **09/15/2016**

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	Proximo Spirits, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	333 Washington Street Jersey City, NJ 07302 UNITED STATES		

Attorney information	Erica Halstead ABELMAN, FRAYNE & SCHWAB 666 THIRD AVE. 10th Floor NEW YORK, NY 10017 UNITED STATES ehalstead@lawabel.com, docket@lawabel.com Phone:2129499022		
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### Registration Subject to Cancellation

Registration No	4994108	Registration date	07/05/2016
Registrants	LABONTE, BRUCE S, SR 230 BARRETTE LANE WENDELL, NC 27591 UNITED STATES  LABONTE, ELEANOR R 230 BARRETTE LANE WENDELL, NC 27591 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 025. First Use: 2016/04/15 First Use In Commerce: 2016/04/21 All goods and services in the class are cancelled, namely: Jackets; Long-sleeved shirts; Polo shirts; Sweaters; Sweatshirts; T-shirts
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### Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
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### Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	3585895	Application Date	05/05/2008
Registration Date	03/10/2009	Foreign Priority Date	NONE
Word Mark	KRAKEN		

Design Mark	<h1>KRAKEN</h1>		
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2005/02/04 First Use In Commerce: 2005/02/04 Malt liquor		

U.S. Registration No.	3741146	Application Date	04/16/2008
Registration Date	01/19/2010	Foreign Priority Date	NONE
Word Mark	KRAKEN		
Design Mark	<h1>KRAKEN</h1>		
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2009/08/01 First Use In Commerce: 2009/08/01 Rum		

U.S. Registration No.	4355033	Application Date	03/16/2012
Registration Date	06/18/2013	Foreign Priority Date	NONE
Word Mark	KRAKEN		
Design Mark	<h1>KRAKEN</h1>		
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2012/11/01 First Use In Commerce: 2012/11/01 Non-alcoholic cocktail mix; beer; non-alcoholic malt beverages; flavored brewed-malt beverages; alcoholic malt beverages		

U.S. Registration No.	5012128	Application Date	12/01/2015
Registration Date	08/02/2016	Foreign Priority Date	NONE
Word Mark	KRAKEN		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 006. First use: First Use: 2013/11/27 First Use In Commerce: 2013/11/27 Non-luminous and non-mechanical metal signs</p> <p>Class 011. First use: First Use: 2013/01/17 First Use In Commerce: 2013/01/17 Electric lamps</p> <p>Class 016. First use: First Use: 2013/01/18 First Use In Commerce: 2013/01/18 Posters; notebooks</p> <p>Class 018. First use: First Use: 2013/02/19 First Use In Commerce: 2013/02/19 Umbrellas</p> <p>Class 024. First use: First Use: 2013/01/18 First Use In Commerce: 2013/01/18 Shower curtains; towels; blankets; handkerchiefs</p> <p>Class 028. First use: First Use: 2014/02/07 First Use In Commerce: 2014/02/07 Standard suited playing cards; poker sets consisting of playing cards; novelty sea beast tooth</p> <p>Class 034. First use: First Use: 2014/06/06 First Use In Commerce: 2014/06/06 Lighters for smokers</p>		

U.S. Registration No.	3820616	Application Date	07/21/2009
Registration Date	07/20/2010	Foreign Priority Date	NONE
Word Mark	THE KRAKEN		

Design Mark	
Description of Mark	The mark consists of the words "THE KRAKEN" appearing within a shield, a representation of a sea monster similar to a giant squid, and a three-masted ship in the monster's tentacles.
Goods/Services	Class 033. First use: First Use: 2009/08/01 First Use In Commerce: 2009/08/01 Rum

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	RELEASE THE KRAKEN		
Goods/Services	clothing		

U.S. Registration No.	4068154	Application Date	06/15/2010
Registration Date	12/06/2011	Foreign Priority Date	NONE
Word Mark	RELEASE THE KRAKEN		
Design Mark	<p style="text-align: center; font-size: 2em; font-weight: bold;">RELEASE THE KRAKEN</p>		
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2011/09/19 First Use In Commerce: 2011/09/19 Rum		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	KRAKEN		
Goods/Services	clothing		

Attachments	77466187#TMSN.png( bytes ) 77978366#TMSN.png( bytes ) 85572320#TMSN.png( bytes ) 86835802#TMSN.png( bytes ) 77786210#TMSN.png( bytes ) 85063419#TMSN.png( bytes ) RELEASE THE KRAKEN Pet to Cancel.pdf(128088 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	/erh/
Name	Erica Halstead, Assoc of Atty of Record
Date	09/15/2016

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

In the Matter of Reg. No. 4994108  
Mark: RELEASE THE KRAKEN GOLF & Design  
Reg. Date: July 5, 2016

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<b>PROXIMO SPIRITS, INC.,</b>	:	
	:	
<b>Petitioner,</b>	:	
	:	
v.	:	
	:	<b>Cancellation No.</b>
<b>BRUCE S. LABONTE, SR. and, ELEANOR R. LABONTE</b>	:	
	:	
<b>Registrants</b>	:	
	:	

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**PETITION FOR CANCELLATION**

Petitioner, Proximo Spirits, Inc., a corporation of Delaware, having an address of 333 Washington St., Jersey City, New Jersey, 07302 (“Petitioner”), believes that it is and will continue to be damaged by Reg. No. 4994108 for the mark RELEASE THE KRAKEN GOLF & Design, in the name of Bruce S. LaBonte, Sr. and Eleanor R. LaBonte, individuals with a business address of 230 Barrette Lane, Wendell, North Carolina 27591 (“Registrants”), and petitions to cancel same.

As grounds for cancellation, Petitioner alleges:

1. On information and belief, Registrants filed application Ser. No. 86/463504 to

register the mark RELEASE THE KRAKEN GOLF & Design



in Class 25 (hereinafter “Registrants’ Mark). The application was filed on November 24, 2014. Registrants’ Mark proceeded to registration on July 5, 2016, with a claimed date of first use of April 21, 2016. The mark was assigned Reg. No. 4994108.

2. Petitioner owns the following U.S. registrations:

RELEASE THE KRAKEN	Reg. No. 4068154	Class 33
KRAKEN	Reg. No. 3585895	Class 32
KRAKEN	Reg. No. 3741146	Class 33
KRAKEN	Reg. No. 4355033	Class 32
KRAKEN	Reg. No. 5012128	Classes 6, 11, 16, 18, 24, 28 and 34
	Reg. No. 3820616	Class 33

(hereinafter “Petitioner’s KRAKEN Marks”).

3. Petitioner first used one or more of Petitioner’s KRAKEN Marks in interstate commerce in connection with alcoholic beverages since at least as early as 2005.
4. Petitioner first used one or more of Petitioner’s KRAKEN Marks in interstate commerce in connection with clothing since at least as early as 2010.
5. Petitioner’s common law rights in and to Petitioner’s KRAKEN Marks predate both the filing date of Registrants’ Mark as well as Registrants’ claimed date of first use in commerce.

6. Petitioner's registration rights in and to Petitioner's KRAKEN Marks predate both the filing date of Registrants' Mark as well as Registrants' claimed date of first use in commerce.
7. Petitioner enjoys priority of use of Petitioner's KRAKEN Marks over any actual or constructive use which may be claimed by Registrants.
8. By virtue of the distribution, sale, advertising and promotion of products bearing Petitioner's KRAKEN Marks, they are widely recognized by the purchasing public as identifying Petitioner and its goods. The KRAKEN trademark has become, and continues to be, a valuable asset to Petitioner and its business.
9. Registrants' Mark contains the Petitioner's widely recognized and source-identifying trademark KRAKEN.
10. Registrants' Mark contains the entirety of Petitioner's registered mark RELEASE THE KRAKEN.
11. A KRAKEN is a legendary sea creature of giant size and nearly identical to a squid or an octopus.
12. Petitioner uses Petitioner's KRAKEN Marks with the design of an octopus.
13. Registrants' Mark contains the design of a sea creature resembling a squid or an octopus.
14. Registrants' Mark is substantially similar in appearance to Petitioner's KRAKEN Marks.
15. Registrants' Mark is substantially similar in sound to Petitioner's KRAKEN Marks.

16. Registrants' Mark conveys an overall commercial impression that is similar to that conveyed by Petitioner's KRAKEN Marks.
17. Petitioner uses Petitioner's KRAKEN Marks on clothing.
18. Registrants' Mark covers "jackets; long-sleeved shirts; polo shirts; sweaters; sweatshirts; t-shirts" in Class 25.
19. Registrants' goods are identical to certain of Petitioner's goods and are likely to be marketed through the same or similar retail outlets.
20. Registrants' goods are identical to certain of Petitioner's goods and are likely to be marketed to the same or similar consumers.
21. Registrants' Mark is confusingly similar to Petitioner's KRAKEN Marks.
22. As a result of the overwhelming similarities between the Parties' respective Marks and goods, consumers encountering such marks will be confused and will mistakenly believe that the Parties' respective goods emanate from a single source.
23. Accordingly, use and registration of Registrants' Mark is likely to deceive and to cause mistake or confusion among members of the public as to the source of Registrants' goods within the meaning of 15 U.S.C. §1052(d).
24. Based on the foregoing, Petitioner believes it has been damaged by, and will continue to be damaged by, the continued registration of Registrants' Mark.

**WHEREFORE**, Petitioner prays that Reg. No. 4994108 be canceled. Petitioner requests that the requisite filing fee of \$300 be charged to the undersigned's Deposit Account No. 010035-6336.

Respectfully submitted,



Date: September 15, 2016

**LAWRENCE E. ABELMAN**  
**ERICA R. HALSTEAD**  
*Counsel for Petitioner,*  
*Proximo Spirits, Inc.*

**ABELMAN, FRAYNE & SCHWAB**  
666 Third Avenue  
10<sup>th</sup> Floor  
New York, NY 10017  
212-949-9022

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing PETITION FOR CANCELLATION was served by first class mail, postage prepaid, this 15th day of September, 2016 upon Registrants' correspondence address:

Bruce S. Labonte, Sr.  
230 Barrette Lane  
Wendell, North Carolina 27591



**ERICA R. HALSTEAD**  
Abelman, Frayne & Schwab