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

Proceeding	92064471
Party	Defendant Bruce S Labonte Sr and Eleanor R Labonte
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Date	10/30/2016
Attachments	kracken response.pdf(239328 bytes) kracken response exhibits.pdf(278220 bytes)

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

In the matter of Registration No.: 4994108

Date of Issue: July 5, 2016

Trademark RELEASE THE KRAKEN GOLF

Proximo Spirits, Inc.)	
)	
Petitioner,)	
)	
v.)	Cancellation No.: 92064471
)	
Bruce S. LaBonte Sr. and Eleanor R. LaBonte)	
)	
Registrants)	
)	

REGISTRANTS' ANSWER TO PETITION FOR CANCELLATION

Registrants Bruce S. LaBonte, Sr. and Eleanor R. LaBonte hereby responds to the petition for cancellation as follows:

1. Admits Registrants filed application Ser. No. 86/463504 in Class 25 on November 24, 2014 and admits Registrants' Mark proceeded to registration on July 5, 2016, with a claimed date of first use of April 21, 2016, and admits mark was assigned Reg. No. 4994108 as far as they do not imply the validity of Petitioner's claim that it is and will continue to be damaged by Reg. No. 4994108.
2. Admits the Petitioner owns stated U.S. registrations in paragraph 2 as far as they do not imply the validity of Petitioner's claim that it is and will continue to be damaged by Reg. No. 4994108.
3. Admits the Petitioner first used one or more of Petitioner's KRAKEN marks in interstate commerce in connection with alcoholic beverages since as least as early as 2005 as far as they do not imply the validity of Petitioner's claims that it is and will continue to be damaged by Reg. No. 4994108.

4. Registrants are without knowledge or information sufficient to form a belief as to paragraph 4 of the petition for cancellation and therefore denies the same.
5. Registrants are without knowledge or information sufficient to form a belief as to paragraph 5 of the petition for cancellation and therefore denies the same.
6. Admits Petitioners' registration rights listed in paragraph 2 predate the filing date and claimed date of first use in commerce of Registrants' Mark as far as they do not imply the validity of Petitioner's claim that it is and will continue to be damaged by Reg. No. 4994108.
7. Registrants are without knowledge or sufficient information to form a belief as to paragraph 7 of the petition for cancellation and therefore denies the same.
8. Registrants are without knowledge or sufficient information to form a belief as to paragraph 8 of the petition for cancellation and therefore denies the same.
9. Denies that Registrants' Mark contains the Petitioner's widely recognized and source identifying trademark KRAKEN. There are numerous examples of companies using the name Kraken including KRAKEN Seafood (refer to Exhibit 1), a registered trademark under Serial No. 86596037.
10. Denies that Registrants' Mark contains the entirety of Petitioner's registered mark RELEASE THE KRAKEN. Registrants' Mark contains the phrase RELEASE THE KRAKEN GOLF. Registrants' mark is in a different font and a kerning and curvature distinct from Petitioner's Mark. Release the Kraken is a catchphrase taken from the movie Clash of the Titans and listed in the Urban Dictionary as a phrase not identified by the masses with Petitioner's mark.
11. Disputes Petitioner's claim that a KRAKEN is "a legendary sea creature of giant size and nearly identical to a squid or an octopus." The KRAKEN is a mythical creature and has been depicted in various ways by artists, including illustrations that are not nearly identical to a squid or octopus. Case in point, the image of a kraken taken from Olaus Magnus' Carta Marina more closely resembles a whale crossed with a lion than a squid or octopus (refer to Exhibits 2a and 2b).

Marina more closely resembles a whale crossed with a lion than a squid or octopus (refer to Exhibits 2a and 2b).

12. Admits Petitioner uses Petitioner's KRAKEN marks with the design of an octopus as far as they do not imply the validity of Petitioner's claim that it is and will continue to be damaged by Reg. No. 4994108. Registrants' mark does not use the design of an octopus.
13. Denies Petitioner's claim that Registrants' Mark contains the "design of a sea creature resembling a squid or an octopus." The Registrants' Mark contains their own artistic impression of a kraken, which is a mythical creature that has been depicted over the centuries in various artistic ways. The Registrants' design contains four tentacles; whereas, a squid or an octopus has eight tentacles.
14. Denies that Registrants' Mark is substantially similar in appearance to Petitioner's KRAKEN marks. Registrants' Mark is a cartoon depiction of a kraken holding a golf club and flagstick. Petitioner's mark is a life like illustration of an octopus and is not depicted holding a golf club or a flagstick.
15. Denies that Registrants' Mark is substantially similar in sound to Petitioner's Mark. Kraken Golf does not sound like KRAKEN rum and consumers are not likely to be confused.
16. Denies that Registrants' Mark conveys an overall commercial impression that is similar to that conveyed by Petitioner's KRAKEN Marks. Petitioner's Mark is used primarily to sell alcoholic beverages and appeal to consumers of rum. The Registrants' mark is primarily used to sell golf attire and appeal to consumers that play golf.
17. Registrants are without knowledge or sufficient information to form a belief as to paragraph 17 of the petition for cancellation and therefore denies the same.
18. Admits Registrants' mark covers "jackets; long-sleeved shirts, polo shirts; sweaters; sweatshirts; t-shirts" in Class 25 as far as they do not imply the validity of Petitioner's claim that it is and will continue to be damaged by Reg. No. 4994108.

20. Denies that Registrants' goods are identical to certain of Petitioner's goods and are likely to be marketed to the same or similar consumers. The Petitioner's consumers are consumers of alcoholic beverages; whereas, the Registrants' primary consumers are consumers that play golf.
21. Denies that Registrants' Mark is confusingly similar to Petitioner's Kraken Marks. There are numerous examples of t-shirts bearing the catchphrase "Release the Kraken" currently being sold in commerce with no confusion goods are the Petitioner's goods. Refer to Exhibit 3.
22. Denies the allegations of paragraph 22 of the petition for cancellation.
23. Denies the allegations of paragraph 23 of the petition for cancellation.
24. Denies the allegations of paragraph 24 of the petition for cancellation.

AFFIRMATIVE DEFENSES

Petitioner has not and will not be damaged by the registration of the trademark RELEASE THE KRAKEN GOLF. There is no likelihood of confusion with respect to Registrants' mark and goods as set forth in the application since Registrants' mark by which the goods of Registrants may be distinguished from goods of Petitioner.

WHEREFORE, Registrants pray that the Cancellation be dismissed with Prejudice.

Respectfully Submitted,

Bruce S. LaBonte Sr Date: 10-30-16
Bruce S. LaBonte, Sr.

Eleanor R. LaBonte Date: 10-30-16
Eleanor R. LaBonte

230 Barrette Lane
Wendell, NC 27591
Cancellation No.: 92064471

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing REGISTRANTS' ANSWER TO PETITION FOR CANCELLATION was served on counsel for petitioner, this 30th day of October, 2016 by sending the same via email and Fed-Ex courier service, to:

Erica R. Halstead
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Bruce S. LaBonte, Sr.



Eleanor R. LaBonte

EXHIBIT 1(a) Examples of other registered trademarks using Kraken in name

TSDR

ASSIGN Status

TTAB Status

(Use the "Back" button of the Internet Browser to return to TESS)



Word Mark KRAKEN SEAFOOD
Goods and Services IC 029. US 046. G & S: Processed frozen seafood; frozen seafood, not live
IC 031. US 001 046. G & S: Live seafood
Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 03.19.05 - Eels; Jellyfish; Manta rays; Octopi; Snake-like fish (eels, etc.), squid, octopi; Squid; Stingrays
06.03.03 - Ocean; Ripples (multiple waves); Waves; open sea (multiple waves)
Serial Number 86596037
Filing Date April 13, 2015
Current Basis 1B
Original Filing Basis 1B
Published for Opposition October 6, 2015
Owner (APPLICANT) Mariscos Bonamar LIMITED LIABILITY COMPANY SPAIN Calle Algubos - 40, Rafelbunyol - 46138 Valencia SPAIN
Attorney of Record Richard Y. Kim
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SEAFOOD" APART FROM THE MARK AS SHOWN
Description of Mark The color(s) red and black is/are claimed as a feature of the mark. The mark consists of an octopus above water, all in red, above the words "KRAKEN SEAFOOD" in black.
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

KRAKEN SPORTS

Word Mark KRAKEN SPORTS
Goods and Services IC 011. US 013 021 023 031 034. G & S: Diving lights. FIRST USE: 20150213. FIRST USE IN COMMERCE: 20150219
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 87209995
Filing Date October 20, 2016
Current Basis 1A
Original Filing Basis 1A
Owner (APPLICANT) Dats Sports Inc. CORPORATION CANADA 67 Wharmcliffe Rd. N London CANADA
Attorney of Record Stephen P. Crump
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

EXHIBIT 1(b)

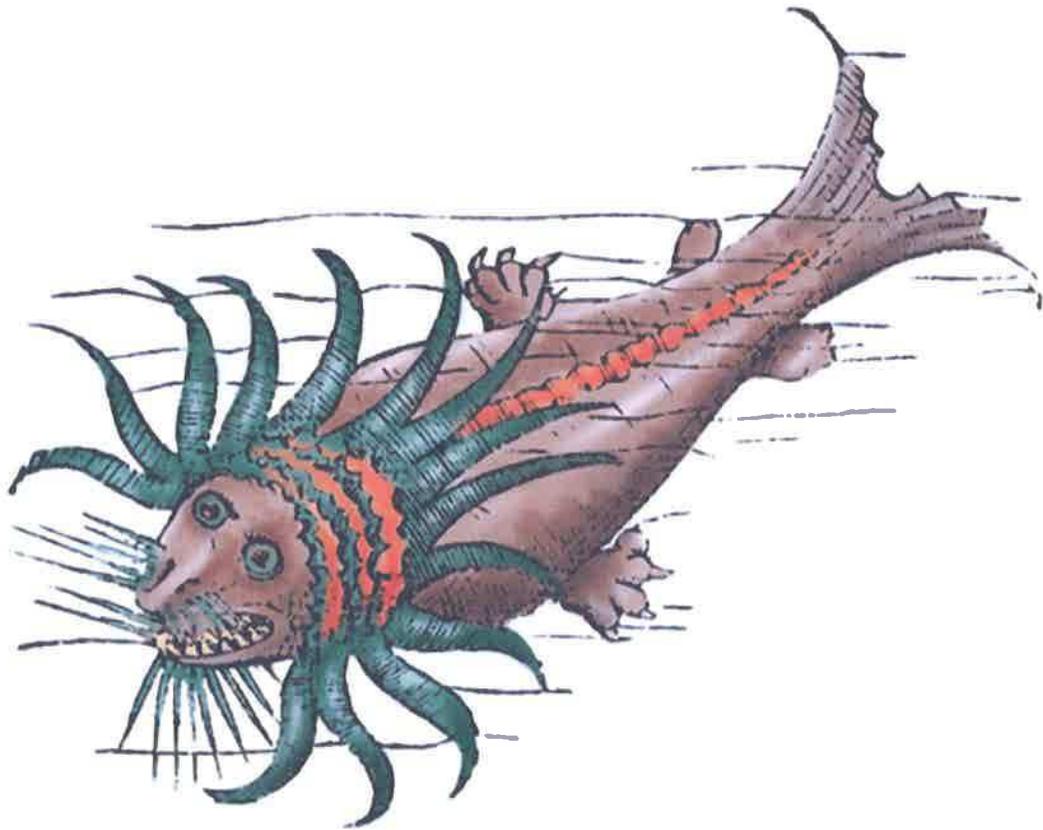


Word Mark KRAKEN
Goods and Services IC 011. US 013 021 023 031 034. G & S: Water filtration systems comprised of a series of filters for filtering storm run-off w
Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 03.19.05 - Eels; Jellyfish; Manta rays; Octopi; Snake-like fish (eels, etc.), squid, octopi; Squid; Stingrays
Serial Number 86098413
Filing Date October 22, 2013
Current Basis 1A
Original Filing Basis 1A
Published for Opposition March 18, 2014
Registration Number 4543245
Registration Date June 3, 2014
Owner (REGISTRANT) Bio Clean Environmental Services, Inc. CORPORATION CALIFORNIA 2972 San Luis Rey Road Oceanic
Description of Mark Color is not claimed as a feature of the mark. The mark consists of the word "KRAKEN" in uppercase letters with two octopi appearing beneath and behind the letters "EN"; the tip of one octopus tentacle appearing on top of the letter "N"; and, the tip
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

Kraken Aquatics

Word Mark KRAKEN AQUATICS
Goods and Services IC 009. US 021 023 026 036 038. G & S: Life vests; Scuba masks; Snorkels. FIRST USE: 20150301. FIRST USE IN COMMERCE: 20150301
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 86950687
Filing Date March 23, 2016
Current Basis 1A
Original Filing Basis 1A
Owner (APPLICANT) Pendulumx LLC LIMITED LIABILITY COMPANY UTAH 874 E Millers Lane Heber City UTAH 84032
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "AQUATICS" APART FROM THE MARK AS SHOWN
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

EXHIBIT 2- 16th Century Illustration of a kraken resembling a whale and lion



A rather more fanciful kraken from Olaus Magnus' *Carta Marina*, a masterful Scandinavian map from the 16th century. For more info, check out [Joseph Nigg's *Sea Monsters: A Voyage Around the World's Most Beguiling Map*](#). It's seriously excellent.
📖 Courtesy James Ford Bell Library

EXHIBIT 2b- Various Artistic Impressions of a kraken



EXHIBIT 3: Release the Kraken T-shirts sold in commerce (examples from zazzle.com, etsy.com, amazon.com, cafepress.com, teepublic.com)

