

ESTTA Tracking number: **ESTTA773744**

Filing date: **09/29/2016**

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 St. Jersey City, NJ 07302 UNITED STATES		

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

Registration No	4611059	Registration date	09/23/2014
Registrant	Hwayoung Co., Ltd. 203-46 Janghang-ro, Ilsandong-gu Goyang-si, KOREA, REPUBLIC OF		

Goods/Services Subject to Cancellation

Class 018. First Use: 2014/01/20 First Use In Commerce: 2014/05/12 All goods and services in the class are cancelled, namely: Backpacks; Briefcases; School bags; Travel bags
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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.	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.	3585895	Application Date	05/05/2008
Registration Date	03/10/2009	Foreign Priority Date	NONE
Word Mark	KRAKEN		
Design Mark			
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. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	KRAKEN		
Goods/Services	TOTE BAGS		

Attachments	86835802#TMSN.png(bytes) 77466187#TMSN.png(bytes) 77978366#TMSN.png(bytes) 85572320#TMSN.png(bytes) KRAKEN Hwayoung Co. CI 18 Pet to Cancel.pdf(158242 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	09/29/2016
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Reg. No. 4611059
Mark: KRAKEN
Reg. Date: September 23, 2014

PROXIMO SPIRITS, INC.,	:	
	:	
Petitioner,	:	
	:	
v.	:	
	:	Cancellation No.
HWAYOUNG CO., LTD.,	:	
	:	
Registrant	:	
	:	

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. 4611059 for the mark KRAKEN in the name of Hwayoung Co., Ltd., having a business address of 203-46 Janghang-ro, Ilsandong-gu Gyeonggi-do, Goyang-si, Republic of Korea (“Registrant”), and petitions to cancel same.

As grounds for cancellation, Petitioner alleges:

1. On information and belief, Registrant filed application Ser. No. 86/024537 on July 31, 2013 to register the mark KRAKEN in Class 18 for “backpacks; briefcases; school bags; travel bags” (hereinafter “Registrant’s Goods”). Registrant’s Mark proceeded to registration on September 23, 2014, with a claimed date of first use of May 12, 2014. The mark was assigned Reg. No. 4611059 (hereinafter “Registrant’s Mark”).

2. Petitioner owns Reg. No. 5012128 for the mark KRAKEN covering the following goods:

“non-luminous and non-mechanical metal signs” in Class 6

“electric lamps” in Class 11

“posters; notebooks” in Class 16

“umbrellas” in Class 18

“shower curtains; towels; blankets; handkerchiefs” in Class 24

“standard suited playing cards; poker sets consisting of playing cards; novelty sea beast tooth” in Class 28

“lighters for smokers” in Class 34

(hereinafter “Petitioner’s Mark”).

3. Petitioner’s rights to Petitioner’s Mark for “umbrellas” in Class 18 are based on commercial use since at least as early as February 2013.

4. In addition to umbrellas, Petitioner has used its KRAKEN mark on “tote bags” since at least as early as February 2013.

5. Accordingly, Petitioner owns common law rights in and to the mark KRAKEN for “tote bags” since at least as early as February 2013.

6. Petitioner’s registration rights in and to Petitioner’s Mark predate both the filing date of Registrant’s Mark as well as Registrant’s claimed date of first use in commerce.

7. Petitioner enjoys priority over Registrant.

8. Petitioner’s common law rights based on commercial use of KRAKEN on “tote bags” predates both the filing date of Registrant’s Mark as well as Registrant’s claimed date of first use in commerce.

9. Petitioner enjoys priority over any constructive use which may be claimed by Registrant.

10. Petitioner also owns the following U.S. registrations:

KRAKEN	Reg. No. 3585895	Malt liquor in Class 32
KRAKEN	Reg. No. 3741146	Rum in Class 33

KRAKEN	Reg. No. 4355033	Non-alcoholic cocktail mix, beer; non-alcoholic malt beverages; flavored brewed malt beverages; alcoholic malt beverages in Class 32
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11. Petitioner first used one or more of the KRAKEN registrations in interstate commerce in connection with alcoholic beverages since at least as early as 2005.
12. By virtue of the distribution, sale, advertising and promotion of products bearing Petitioner's KRAKEN Marks since at least 2005, 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.
13. Registrant's Mark is identical in sight, sound and commercial impression to Petitioner's Mark.
14. Petitioner uses Petitioner's Mark on goods falling in Class 18, namely umbrellas and tote bags.
15. Registrant's Goods are identical to and/or commercially related to umbrellas and tote bags.
16. Registrant's Goods are likely to be marketed through the same or similar retail outlets as Petitioner's umbrellas and tote bags.
17. Registrant's Goods are likely to be marketed to the same or similar consumers as Petitioner's umbrellas and tote bags.
18. Registrant's Mark is confusingly similar to Petitioner's Mark.

19. 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.
20. Accordingly, use and registration of Registrant's Mark is likely to deceive and to cause mistake or confusion among members of the public as to the source of Registrant's Goods within the meaning of 15 U.S.C. §1052(d).
21. Based on the foregoing, Petitioner believes it has been damaged by, and will continue to be damaged by, the continued registration of Registrant's Mark.

WHEREFORE, Petitioner prays that Reg. No. 4611059 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 29, 2016

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

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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 29th day of September, 2016 upon Registrant's correspondence address, as well as by Federal Express, postage prepaid, upon Registrant's address:

Julie C. Jennings
Senniger Powers LLP
100 N. Broadway, Floor 17
Saint Louis, Missouri 63102-2728

Hwayoung Co., Ltd.
203-46 Janghang-ro, Ilsandong-gu
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