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Filing date: **01/20/2005**

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

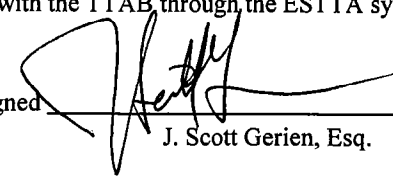
Proceeding	92043953
Party	Plaintiff Tri-Star Marketing, LLC Tri-Star Marketing, LLC 712 Bancroft Road, #463 Walnut Creek, CA 94598 UNITED STATES
Correspondence Address	J. SCOTT GERIEN OWEN, WICKERSHAM & ERICKSON 455 MARKET STREET, 19TH FLOOR SAN FRANCISCO, CA 94105 UNITED STATES sgerien@owe.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	J. Scott Gerien
Filer's e-mail	sgerien@owe.com
Signature	/j.scott gerien/
Date	01/20/2005
Attachments	MotiontoAmendPetition.pdf (3 pages) AmendedPetitiontoCancel.pdf (4 pages)

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455 Market Street, 19th Floor ~ San Francisco, California 94105
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I hereby certify that this correspondence is being electronically filed with the TTAB through the ESTTA system located at <http://estta.uspto.gov>.

Dated: 1/20/05

Signed  _____
J. Scott Gerien, Esq.

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

In the matter of Trademark Registration

Reg. No.: 2282461
Reg. Date: October 5, 1999
Mark: RUSTICO
International Class: 33
Goods: Wines and sparkling wines

Tri-Star Marketing, LLC,)
)
Petitioner,)
)
v.)
)
Nino Franco Spumanti S.R.L.,)
)
Registrant.)

Cancellation No. 92043953

PETITIONER'S MOTION TO AMEND PETITION TO CANCEL

Petitioner, by its attorney, hereby moves, pursuant to Trademark Rule 2.115, to amend its petition to cancel to amend its grounds for cancellation of Registration No. 2,282,461. Specifically, Petitioner wishes to allege fraud in the application for and maintenance of Registrant's registration as the basis for cancellation of said registration. In support of this motion, Applicant asserts that it has conducted an investigation of Registrant's use of the RUSTICO mark in the United States and based on such investigation it appears that Registrant has only ever used the mark in association with sparkling wine and not in association with still wine.

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1 Accordingly, upon information and belief, at the time Registrant filed its application, as
2 well as at the time Registrant filed the required Section 8 Declaration of Continued Use in
3 connection with Reg. No. 2,282,461, Registrant was not using the RUSTICO trademark in
4 association with wine and that the allegations of use set forth in the original application and the
5 Section 8 Declaration of Continued Use were fraudulent allegations made with the intent of
6 deceiving the Patent and Trademark Office into issuing and maintaining the registration for the
7 mark for wine when the registration should properly not have issued for the mark for wine and
8 should have been canceled for non-use of the mark as it related to wine.

9 In view of the foregoing, and because this motion is filed promptly after receiving the
10 aforesaid information and notice from Registrant that the Section 8 Declaration of Continued
11 Use was filed by Registrant on December 27, 2004, and because the motion has been filed
12 before any discovery has been initiated in this matter, it is submitted that the motion to amend
13 is well taken and that the "Amended Petition to Cancel" submitted herewith should be accepted
14 and substituted for the original Petition to Cancel.

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Respectfully submitted,
OWEN, WICKERSHAM & ERICKSON P.C.

Dated: January 20, 2005

By 

J. Scott Gerien

455 Market Street, 19th Floor
San Francisco, CA 94105
(415) 882-3200

Attorneys for Petitioner
Tr-Star Marketing, LLC

Owen, Wickersham & Erickson, P.C.
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CERTIFICATE OF SERVICE

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I, Jill K. O'Hara, am a citizen of the United States; employed in the County of San Francisco, State of California, over the age of eighteen; and not a party to this action. My business address is 455 Market Street, 19th Floor, San Francisco, California 94105.

On the date below, I served the following document(s):

PETITIONER'S MOTION TO AMEND PETITION TO CANCEL

on the person(s) listed below:

Martin P. Hoffman
Hoffman, Wasson & Gitler, PC
2461 South Clark Street
Crystal Center 2 - Suite 522
Arlington, VA 22202

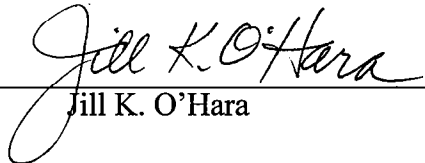
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I declare, under penalty of perjury, that the foregoing is true and correct and is executed January 20, 2005 at San Francisco, California.



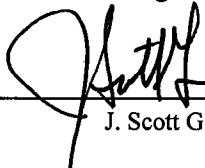
Jill K. O'Hara

Owen, Wickersham & Erickson, P.C.
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Voice 415/882-3200 ~ Fax 415/882-3232

Certificate of Electronic Filing

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Dated: 1/30/05

Signed  _____
J. Scott Gerien, Esq.

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

In the matter of Trademark Registration

Reg. No.: 2282461
Reg. Date: October 5, 1999
Mark: RUSTICO
International Class: 33
Goods: Wines and sparkling wines

Tri-Star Marketing, LLC,)
) Cancellation No. 92043953
Petitioner,)
)
v.)
)
Nino Franco Spumanti S.R.L.,)
)
Registrant.)

AMENDED PETITION TO CANCEL

Tri-Star Marketing, LLC, a limited liability company organized under the laws of the State of California with a mailing address of 712 Bancroft Road, #463, Walnut Creek, CA 94598 ("Petitioner"), believes it will be damaged by the continued registration of the mark RUSTICO for wine and sparkling wine, shown in Reg. No. 2,282,461, registered on October 5, 1999 by Nino Franco Spumanti S.R.L. ("Registrant") and hereby petitions to cancel the same.

As grounds in support of its petition to cancel, Petitioner asserts as follows:

1. Petitioner and Petitioner's predecessor-in-interest, for many years and since long prior to any filing date or date of first use upon which Registrant can rely, has adopted and

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1 continuously used the mark VINO RUSTICO in association with wine.

2 2. Registrant is the owner of a trademark registration for the mark RUSTICO for
3 wine and sparkling wine. That trademark registration was issued on October 5, 1999 and
4 assigned U.S. Trademark Registration No. 2,282,461.

5 3. Upon information and belief, On December 27, 2004, Registrant filed a Section
6 8 Declaration of Continued Use of the mark RUSTICO for wine and sparkling wine in relation
7 to U.S. Trademark Registration No. 2,282,461.

8 4. Upon information and belief, Registrant has only ever used the mark RUSTICO
9 in commerce in the United States on sparkling wine, but never still wine.

10 5. In its original application and, upon information and belief, in its Section 8
11 Declaration of Continued Use, Registrant alleged use of the RUSTICO mark in U.S. commerce
12 in association with both wine *and* sparkling wine.

13 6. On the basis of the actions plead in the immediately preceding paragraphs,
14 Registrant has committed fraud against the U.S. Patent and Trademark Office in obtaining
15 Registration No. 2,282,461 in violation of 15 U.S.C. §1064(3).

16 7. On the basis of the actions plead in the immediately preceding paragraphs,
17 Registrant has committed fraud against the U.S. Patent and Trademark Office in maintaining
18 Registration No. 2,282,461 in violation of 15 U.S.C. §1064(3).

19 8. In light of the similarity of between Petitioner's VINO RUSTICO mark for wine
20 and Registrant's RUSTICO mark for sparkling wine, Petitioner will be harmed if Registrant is
21 allowed to continue to maintain its fraudulent registration.

22 WHEREFORE, Petitioner prays that the petition to cancel be sustained and that the
23 registration be canceled.

24 Petitioner has previously paid the \$300.00 filing fee for the petition to cancel.

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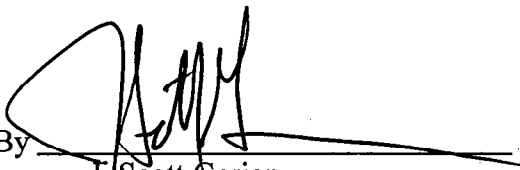
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Respectfully submitted,

OWEN, WICKERSHAM & ERICKSON P.C.

By 

J. Scott Gerien

455 Market Street, 19th Floor
San Francisco, CA 94105
(415) 882-3200

Attorneys for Petitioner
Tr-Star Marketing, LLC

Dated: January 20, 2005

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1 CERTIFICATE OF SERVICE

2 I, Jill K. O'Hara, am a citizen of the United States; employed in the County of San
3 Francisco, State of California, over the age of eighteen; and not a party to this action. My
4 business address is 455 Market Street, 19th Floor, San Francisco, California 94105.

5 On the date below, I served the following document(s):

6 **AMENDED PETITION TO CANCEL**

7 on the person(s) listed below:

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Hoffman, Wasson & Gitler, PC
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Crystal Center 2 - Suite 522
10 Arlington, VA 22202

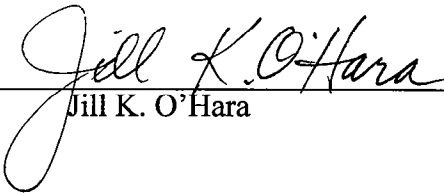
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17 Upon completion of the transmission, the transmitting machine issued a transmission
report showing the transmission was complete and without error.

18 I declare, under penalty of perjury, that the foregoing is true and correct and is
19 executed January 20, 2005 at San Francisco, California.
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22 _____
Jill K. O'Hara

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