

ESTTA Tracking number: **ESTTA101201**

Filing date: **09/26/2006**

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	Sparkling Wine International Limited		
Entity	Limited Company	Citizenship	British Virgin Islands
Address	Atlantic Chambers Romasco Harbour House Tortola, VIRGIN ISLANDS, BRITISH		

Attorney information	Frank D. Decolvenaere Gottlieb, Rackman & Reisman, P.C. 270 Madison Avenue New York, NY 10016-0601 UNITED STATES efiling@grr.com, fdecolvenaere@grr.com Phone:212-684-3900
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### Registration Subject to Cancellation

Registration No	2536481	Registration date	02/05/2002
Registrant	DFO, LLC. 203 EAST MAIN STREET SPARTANBURG, SC 29319 UNITED STATES		
Goods/Services Subject to Cancellation	Class 042. First Use: 1995/02/00 , First Use In Commerce: 1995/02/00 Goods/Services: RESTAURANT SERVICES		

Attachments	Petition for Cancellation Reg'n No. 2536481 'TIL DAWN.pdf ( 7 pages )(115134 bytes )
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Signature	/frank decolvenaere/
Name	Frank D. Decolvenaere
Date	09/26/2006

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

IN THE MATTER OF TRADEMARK REGISTRATION. No. 2,536,481

Mark : 'TIL DAWN

Registrant : DFO, LLC.

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Sparkling Wine International Limited,	:	
	:	
Petitioner,	:	
	:	Cancellation No.
- v -	:	
	:	
DFO, LLC.,	:	
	:	
Registrant.	:	
-----X	:	

**PETITION FOR CANCELLATION**

Sparkling Wine International Limited (hereinafter "Petitioner"), through its attorneys, believing that it is and will continue to be damaged by the registration of the trademark 'TIL DAWN of Registration No. 2,536,481, registered to DFO, LLC. (hereinafter "Registrant") on February 5, 2002, alleges on knowledge as to Petitioner and otherwise on information and belief, as follows:

1. Petitioner is a limited company organized in accordance with the laws of the British Virgin Islands, with its address at Atlantic Chambers Romasco Harbour House Road Town, Tortola, British Virgin Islands.
2. Registrant is a Delaware limited liability company, with an address at 203 East Main Street, Spartanburg, North Carolina 29319, United States.
3. Petitioner is the owner of the trademark DUSK TILL DAWN & Design for restaurant, bar, cocktail lounge services, public house and catering services, and has been using the mark in commerce for these services and/or has a good faith bona fide intention to use the mark for these services in commerce in accordance with 15 U.S.C. § 1051(b).

4. Petitioner is the owner of the following, pending trademark application, for which it is seeking registration on the Principal Register of the United States Patent and Trademark Office (“USPTO”):

<b>MARK</b>	<b>SERVICES</b>	<b>SERIAL NO.</b>	<b>FILING DATE</b>
DUSK TILL DAWN & Design	Restaurant, bar, cocktail lounge services, public house and catering services in Class 43	76/628,307	January 19, 2005

A copy of the printout of the USPTO trademark database record showing the particulars of the application is annexed as Exhibit “A” and made a part hereof.

5. Registrant is the record owner of the following trademark registration on the Principal Register of the USPTO:

<b>MARK</b>	<b>SERVICES</b>	<b>FIRST USE/ FIRST USE IN COMMERCE</b>	<b>REGISTRATION NO./ REGISTRATION DATE</b>
‘TIL DAWN	Restaurant services in Class 43	February 00, 1995 February 00, 1995	2,536,481 February 5, 2002

6. Upon information and belief, Petitioner's application will be refused registration on the basis of said Registration No. 2,536,481 on the ground that Petitioner's mark so resembles the mark shown in the said Registration as to be likely to cause confusion, or to cause mistake or to deceive. As such, Petitioner will be damaged in that it will not be permitted to register its mark.

7. Registrant is not now using the mark ‘TIL DAWN as a trademark for restaurant services in Class 43. Registrant has discontinued bona fide use of the mark ‘TIL DAWN in the ordinary course of trade for restaurant services in Class 43, with no intent to resume such use thereof.

8. Registrant has abandoned the mark ‘TIL DAWN for restaurant services in Class 43.

9. Petitioner is or will be damaged by the continued registration of the mark shown in

Registration No. 2,536,481 since, by virtue of such registration, doubts would be raised as to the exclusive right of Petitioner to use its mark.

10. Petitioner believes that it is or will be damaged by the continued existence of Registrant's Registration No. 2,536,481 because Petitioner's ability to legally use and register its mark will be impaired by the continued registration of Registrant's mark.


11. Based on the foregoing, the continued existence of Registration No. 2,536,481 on the records of the U.S. Patent and Trademark Office is causing or will cause damage to Petitioner.

WHEREFORE, Petitioner prays that the instant Petition for Cancellation be granted and that the Trademark Trial and Appeal Board cancel Registration No. 2,536,481.

Dated: New York, New York  
September 26, 2006

Respectfully submitted,

GOTTLIEB, RACKMAN & REISMAN, P.C.

By:   
Frank D. Decolvenaere  
Attorneys for Petitioner  
270 Madison Avenue  
New York, New York 10016-0601  
(212) 684-3900

Attachment: USPTO TARR Printout

# Exhibit A

## Latest Status Info

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2006-09-26 19:35:41 ET

Serial Number: 76628307 [Assignment Information](#)

Registration Number: (NOT AVAILABLE)

Mark



*DUSK TILL DAWN*

(words only): DUSK TILL DAWN

Standard Character claim: No

**Current Status:** A non-final action has been mailed. This is a letter from the examining attorney requesting additional information and/or making an initial refusal. However, no final determination as to the registrability of the mark has been made.

**Date of Status:** 2006-03-27

**Filing Date:** 2005-01-19

**Transformed into a National Application:** No

**Registration Date:** (DATE NOT AVAILABLE)

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 116

**Attorney Assigned:**  
KLOIBER KRISTINA [Employee Location](#)

**Current Location:** M7D -TMO Law Office 116 - Docket Clerk

**Date In Location:** 2006-03-27

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LAST APPLICANT(S)/OWNER(S) OF RECORD

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1. SPARKLING WINE INTERNATIONAL LIMITED

**Address:**  
SPARKLING WINE INTERNATIONAL LIMITED  
Atlantic Chambers Romasco Harbour House Road Town  
Tortola  
Br. Virgin Islands  
**Legal Entity Type:** LIMITED COMPANY

State or Country Where Organized: Br. Virgin Islands

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### GOODS AND/OR SERVICES

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International Class: 043

Class Status: Active

Restaurant, bar, cocktail lounge services, public house and catering services

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

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### ADDITIONAL INFORMATION

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Design Search Code(s):

01.05.03 - Sun representing a human face or an animal

01.11.02 - Moons, crescent; Moons, half; Partial moons, including half moons and crescent moons (not a moon with craters)

24.17.25 - Biohazard symbol; Degree sign; Equal sign; Greater than symbol (mathematical); Handicapped symbol; Hazardous materials symbol; Less than symbol (mathematical); Peace symbol; Pound sign (#); Recycling symbol; Yin Yang symbol

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### MADRID PROTOCOL INFORMATION

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(NOT AVAILABLE)

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### PROSECUTION HISTORY

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2006-03-27 - Non-final action mailed

2006-03-25 - Non-Final Action Written

2006-03-13 - Amendment From Applicant Entered

2006-02-21 - Communication received from applicant

2006-02-21 - PAPER RECEIVED

2005-08-19 - Non-final action mailed

2005-08-19 - Non-Final Action Written

2005-08-18 - Assigned To Examiner

2005-02-01 - New Application Entered In Tram

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### CORRESPONDENCE INFORMATION

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Correspondent

Barbara H. Loewenthal (Attorney of record)

BARBARA H. LOEWENTHAL  
GOTTLIEB, RACKMAN & REISMAN, P.C.

Latest Status Info

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