

ESTTA Tracking number: **ESTTA284977**

Filing date: **05/20/2009**

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	Baroness Small Estates, Inc.		
Entity	Corporation	Citizenship	Colorado
Address	2395 West Second Avenue Denver, CO 80223 UNITED STATES		

Attorney information	Clinton J. Cusick Muskin & Cusick LLC 100 W. Main Street Suite 205 Lansdale, PA 19446 UNITED STATES ccusick@patentstrademarks.com Phone:215 853 8255		
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Registration Subject to Cancellation

Registration No	1396062	Registration date	06/03/1986
Registrant	BACARDI IMPORTS, INC. 2100 BISCAYNE BOULEVARD MIAMI, FL 33137 UNITED STATES		

Goods/Services Subject to Cancellation

Class 033. First Use: 1982/03/25 First Use In Commerce: 1982/03/25 All goods and services in the class are cancelled, namely: WINES
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Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14

Attachments	1013-158.2 Petition to Cancel.pdf (6 pages)(257826 bytes) cert of service scan.pdf (1 page)(60325 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	/43573/
Name	Clinton J. Cusick

Date	05/20/2009
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**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In re Registration No. : 1,396,062
For the Mark : PAPILLON
Registered on : June 3, 1986

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BARONESS SMALL ESTATES, INC. :
:
 Petitioner, : Cancellation No. _____
:
 v. :
:
BACARDI IMPORTS, INC. :
:
 Registrant. :
----- X

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

PETITION TO CANCEL

Petitioner Baroness Small Estates, Inc. a Colorado Corporation (Petitioner) having their principal place of business at 2395 West Second Avenue, Denver, CO 80223, believe that they are damaged by the registration of the mark in U.S. Trademark Registration No. 1,396,062 issued June 3, 1986.

To the best of petitioner's knowledge, the name and address of the current owner of the Registration is Bacardi Imports, Inc. a New York corporation located at 2100 Biscayne Boulevard, Miami, FL 33137.

The above-identified Petitioner believes that it will be damaged by the above-identified registration, and hereby petitions to cancel same. Petitioner's Application Serial No. 77/582487 is currently pending before the USPTO. The Examining Attorney has refused registration of the PAPILLON mark based on Section 2(d) in light of U.S. Registration No. 1,396,062. Petitioner Applicant will be damaged by continued registration of the PAPILLON mark, Registration number 1,396,062 (hereinafter PAPILLON '062).

The grounds for cancellation are as follows:

1. The PAPILLON '062 mark has been abandoned.
2. Attached is a list of the brands owned by Bacardi Imports, Inc. as posted on http://www.bacardilimited.com/brands_other.html showing that Bacardi Imports, Inc. does not use the PAPILLION mark.
3. Bacardi Imports, Inc. is not making sales of products bearing the PAPILLON '062 mark in the United States. Failure to make sales in the United States is failure to use the mark in commerce in the United States. This constitutes abandonment as defined in Lanham Act Section 45 which states in part that a mark is abandoned when "its use has been discontinued with intent not to resume such use....Nonuse for 3 consecutive years shall be prima facie evidence of abandonment." 15 U.S.C. § 1127. Minimal use is not sufficient to avoid a finding of abandonment. Paramount Pictures Corp. v. White, 31 USPQ2d 1768, 1774 (TTAB 1994).
4. The mark was not in use on the goods listed in the application at the time of filing. The Application for registration of the PAPILLON '062 mark was filed on July 25, 1985. The goods listed in the Application include "wine in Class 33" (hereafter The Goods). The mark has not in fact been used on The Goods listed in the Application. The Applicant knowingly made a material false representation to the USPTO in order to obtain registration of its trademark for the identified goods.
5. The registered mark was obtained fraudulently. The Applicant or Applicant's representative signed a declaration stating that the mark was in use on The Goods listed in the Application. Since the mark was not in use on The Goods in the application at the time of filing or the time of registration, this constitutes fraud on the USPTO. Lanham Act § 14(3), 15 U.S.C. § 1064(3). Medinol Ltd. v. Neuro Vasx, Inc., 67 USPQ2d 1205 (TTAB 2003).
6. The PAPILLON '062 registration was obtained by knowingly false or fraudulent statements. The facts fall under the ruling of the Board in the Medinol case where Petitioner alleged that "false statements were made with the intent to induce authorized agents of the PTO to grant said registration, and reasonably relying upon the truth of said false statements, the PTO did, in fact, grant said registration to Registrant." The Board concluded "[i]f fraud can be shown in the procurement of a registration, the entire resulting registration is void." Medinol Ltd. v. Neuro Vasx, Inc., 67 USPQ2d 1205 (TTAB 2003).
7. On June 1, 1992, Senior Vice President and General Counsel of Bacardi Imports, Inc. signed a declaration in support of renewal stating that the PAPILLON '062 mark was in use in interstate commerce. This statement was knowingly incorrect or fraudulent, and the statement was made to obtain renewal of the Registration. This constitutes fraud on the PTO. Torres v. Cantine Torresella S.r.l., 808 F.2d 46, 49 1 USPQ2d 1483, 1485 (Fed. Cir. 1986).

WHEREFORE, Petitioner requests that Registration No. 1,396,062 be cancelled under Section 14, subparagraph 3 of the Lanham Act, 15 U.S.C. S 1064 and that this Petition for Cancellation be sustained in favor of Petitioner.

Please direct all correspondence to:

Clinton J. Cusick
Muskin & Cusick LLC
100 W. Main Street, Suite 205
Lansdale, PA 19446


Petitioner herein appoints Clinton J. Cusick and Shawn R. Farmer their attorneys to transact all business in the U.S. Patent and Trademark Office related to this matter.

Accompanying the electronic submission of this Petition for Cancellation is the required fee of \$300.

Respectfully submitted,

BARONESS SMALL ESTATES, INC.

By their Attorneys



Clinton J. Cusick
Muskin & Cusick LLC
100 W. Main Street, Suite 205
Lansdale, PA 19446

Our Ref.: 1013-158.2

Attachment



BACARDI LIMITED

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OUR BRANDS:

Bacardi Global Brands

Our brands do so well, we believe, because of their consistent high quality and the excellence they add to the enjoyment of our consumers. Bacardi Limited has a portfolio of more than 200 brands and labels spanning a wide variety of spirits categories. The company continues to develop and acquire new brands.

Bacardi Limited makes and distributes, among others:

BACARDI rum, the world's number one premium rum brand

GREY GOOSE, the world leader in super premium vodka

DEWAR'S Blended Scotch Whisky, the number one blended Scotch whisky in the United States

BOMBAY SAPPHIRE, the fastest growing gin brand and one of the top ten fastest growing brands in our industry

ERISTOFF vodka, fast becoming an international favorite

CAZADORES, our high-quality tequila brand

MARTINI, the world's number one wine-based product

Our Brand Portfolio

(Some brands may not be available in your country.)

Our Rum Brands

BACARDI Superior
BACARDI Gold / Oro
BACARDI Black / Select
BACARDI 151*
BACARDI Reserva
BACARDI Añejo
BACARDI 1873
BACARDI 1873 Solera
BACARDI 8
BACARDI Reserva Limitada
CASTILLO Silver
CASTILLO Gold
CASTILLO Añejo
CASTILLO Spiced
PALMAS
ESTELAR

Our Clear Flavoured Rum/Spirit Brands

BACARDI LIMÓN
BACARDI O
BACARDI RAZZ / BERRY
BACARDI CÓCO
BACARDI BIG APPLE / APPLE
BACARDI GRAND MELÓN
BACARDI PEACH RED

Our Italian Vermouth Brands

MARTINI Bianco
MARTINI Rosso
MARTINI Dry
MARTINI Rosé
MARTINI D'Oro

Our French Vermouth Brands

NOILLY PRAT Blanc
NOILLY PRAT Rouge
NOILLY PRAT Ambre

Our Vodka Brands

GREY GOOSE
GREY GOOSE L'Orange
GREY GOOSE La Poire
GREY GOOSE Le Citron
ERISTOFF
ERISTOFF Red
ERISTOFF Black
RUSSIAN PRINCE
NATASHA

Our Blended Scotch Whisky Brands

DEWAR'S WHITE LABEL
DEWAR'S 12 Year Old
DEWAR'S Signature
DEWAR'S 18 Year Old
WILLIAM LAWSON'S Finest Blended
WILLIAM LAWSON'S SCOTTISH GOLD

Our Single Malt Scotch Whisky Brands

ABERFELDY 12 Year Old
ABERFELDY 21 Year Old
GLEN DEVERON 10 Year Old
ROYAL BRACKLA
CRAIGALLACHIE
AULTMORE

Our Gin Brands

BOMBAY
BOMBAY SAPPHIRE
BOSFORD

Our Tequila Brands

CAZADORES Reposado
CAZADORES Blanco
CAZADORES Añejo
CORZO Reposado
CORZO Blanco
CORZO Añejo
CUATRO VIENTOS
CAMINO REAL

Our Cognac Brands

OTARD XO
OTARD VSOP
OTARD Napoleón
OTARD XO Gold
OTARD 65
OTARD 1795 Extra
GASTON DE LA GRANGE

Our Brandy Brands

VIEJO VERGEL

Our Liqueur Brands

GET 27/31
CHINA MARTINI
NASSAU ROYALE
BÉNEDICTINE
B&B

Our Sparkling Wine Brands

MARTINI Asti
MARTINI Riesling
MARTINI Prosecco
MARTINI Brut
GRANDI AUGURI
MAGICI Istanti

BACARDI, the Bat Device and all other marks appearing on the Bacardi Group products shown and/or quoted in this website are trademarks and/or registered trademarks of Bacardi & Company Limited or of other subsidiaries of Bacardi Limited.

ENJOY OUR BRANDS RESPONSIBLY

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CERTIFICATE OF SERVICE

It is hereby certified that on May 20, 2009, a copy of the foregoing PETITION TO CANCEL has been sent by first class mail, postage prepaid to the attorney of record for Applicant:

Maria A Scungio
Fross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza
New York, NY 10017


Clinton J. Cusick