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Filing date: **12/03/2009**

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

Proceeding	92051014
Party	Plaintiff MECKATZER LÄ#WENBRÄ#U BENEDIKT WEIÄ# KG,
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Submission	Motion to Amend Pleading/Amended Pleading
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Date	12/03/2009
Attachments	WHITE GOLD - Amended Petition to Cancel.pdf (6 pages)(21172 bytes)

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

	X	
MECKATZER LÖWENBRÄU	:	
BENEDIKT WEIß KG,	:	
Petitioner,	:	Cancellation No. 92051014
v.	:	
WHITE GOLD, LLC,	:	
Respondent.	:	
	X	

FIRST AMENDED PETITION FOR CANCELLATION

Petitioner, Meckatzer Löwenbräu Benedikt Weiß KG (“Petitioner”), a corporation organized and existing under the laws of Germany, with its principal place of business at Meckatz 10 88178 Heimenkirch, Germany, believes that it is or will be damaged by Registration No. 3,399,843 for the trademark WHITE GOLD and Registration No. 3,399,844 for the trademark WHITE GOLD & Design, both issued on the Principal Register on March 18, 2008 to White Gold, LLC (“Respondent”) for “*aperitifs; orak; brandy; wine; whiskey; gin; vodka; prepared alcoholic cocktails; liqueurs; alcoholic beverages, namely, alcoholic coffee-based beverage; alcoholic tea-based beverage; alcoholic punch; calvados; champagne; cognac; curacao; herb liqueurs; ouzo; schnapps; tequila; alcoholic beverages containing fruit; distilled spirits; mead; peppermint liqueurs; alcoholic bitters; rum; sake; hard cider; rice alcohol*” in International Class 33 (collectively, the “Registrations”), and hereby petitions to cancel the same. As grounds for cancellation, it is alleged that:

1. Petitioner is now, and for many years has been, engaged in the marketing, sale, promotion and/or distribution of a wide variety of alcoholic and non-alcoholic beverages.

2. Petitioner is the proprietor of (i) Application Serial No. 79/025,059 for the mark WEISS-GOLD for “*beers, brewed malt-based alcoholic beverages; mineral waters, aerated waters; fruit juices, fruit juices containing crushed fruit, fruit drinks and lemonades or other carbonated soft drinks*” in International Class 32 and “*alcoholic beverages, namely, potable spirits and liqueurs*” in International Class 33, filed on April 10, 2006 in the United States Patent and Trademark Office under Section 66(a) of the Trademark Act, and (ii) Application No. 79/038,317 for the mark MECKATZER MECKATZER LÖWENBRÄU WEISS GOLD & Design for “*beers; mineral and aerated waters; other non-alcoholic drinks, namely, carbonated beverages, Non-alcoholic punch; fruit drinks and fruit juices; syrups for making beverages; other preparations for making beverages, namely, Concentrates or powders used in the preparation of soft drinks, Non-alcoholic fruit extracts used in the preparation of beverages; non-alcoholic aperitifs; beer-mix beverages, namely, Beer-based coolers; powders for effervescing beverages, namely, effervescent powders used in the preparation of isotonic sports drinks and sports beverages; non-alcoholic cocktails, namely, Non-alcoholic cocktail mixes; essences for making beverages, namely, Essences for the preparation of mineral waters not in the nature of essential oils, Essences for use in making soft drinks not in the nature of essential oils; extracts of hops for making beer; non-alcoholic fruit beverages; non-alcoholic fruit extracts, namely, Non-alcoholic fruit extracts used in the preparation of beverages; non-alcoholic fruit nectars; fruit juices; vegetable juices; ginger beer; isotonic beverages, namely, Isotonic drinks; preparations for making liqueurs, namely, Essences for the manufacture of liqueurs not in the nature of essential oils; lemonades; syrups for making lemonade; malt beer;*”

malt wort; non-alcoholic peanut milk; preparations for making mineral waters; unfermented must; sherbet beverages; unfermented apple must; table waters; tomato juice; unfermented grape must; beer wort” in International Class 32, filed on February 19, 2007 in the United States Patent and Trademark Office under Section 66(a) of the Trademark Act (collectively, the “Applications”).

3. Petitioner’s Applications have preliminarily been refused under Trademark Act Section 2(d) based on the Registrations.

4. On January 15, 2008, Respondent submitted Statements of Use to the U.S.P.T.O. in regards to each of the applications on which the Registrations were based stating, in part, that “The applicant...is using the mark in commerce on or in connection with all goods and/or services listed in the application or Notice of Allowance or as subsequently modified,” (collectively, the “Statements of Use”).

5. Shortly before commencing this cancellation action, Petitioner engaged the services of a private investigator to determine whether Respondent has used the WHITE GOLD and WHITE GOLD & Design marks in the United States in connection with the goods referenced in the Statements of Use.

6. The investigator contacted a representative for Respondent and a number of its U.S. distributors and vendors and learned that Respondent is using the WHITE GOLD and WHITE GOLD & Design marks in the United States only in connection with vodka. The investigator further learned that Respondent has never used the WHITE GOLD and WHITE GOLD & Design marks in the United States in connection with any product other than vodka.

7. Upon information and belief, and upon the results of the investigation commissioned by Petitioner, at the time the Statements of Use were filed in regards to each of

the Registrations, the WHITE GOLD and WHITE GOLD & Design marks were not in use in connection with all of the goods referenced in the Statements of Use.

8. Upon information and belief, and upon the results of the investigation commissioned by Petitioner, Respondent knowingly made false, material misrepresentations of fact in procuring the Registrations with the intent to defraud the U.S.P.T.O. Specifically, upon information and belief, Respondent knew that the WHITE GOLD and WHITE GOLD & Design marks were not in use in connection with all of the goods referenced in the Statements of Use at the time the Statements of Use were filed and made such false, material misrepresentations of fact with the intent to defraud the U.S.P.T.O.

9. Based on the aforementioned acts, Respondent committed fraud in its effort to procure the Registrations.

10. By virtue of the foregoing, if the aforementioned Registrations are permitted to remain on the Principal Register, with all the presumptions conferred by their status as Principal Registrations, Petitioner will be unable to obtain a federal registration for its WEISS-GOLD and MECKATZER MECKATZER LÖWENBRÄU WEISS GOLD & Design trademarks for Petitioner's goods and subjected to damage as a consequence, and Respondent will enjoy unlawful gain and advantage to which it is not entitled under the Lanham Act, 15 U.S.C. §§ 1051, et seq.

WHEREFORE, Petitioner respectfully requests that this Petition for Cancellation be granted and that Registration Nos. 3,399,843 and 3,399,844 be cancelled pursuant to 15 U.S.C. § 1064.

Respectfully submitted,
DORSEY & WHITNEY LLP

Dated: December 3, 2009

By: /ggm/
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(212) 415-9200

Attorneys for Petitioner

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

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MECKATZER LÖWENBRÄU	:	
BENEDIKT WEIß KG,	:	
Petitioner,	:	Cancellation No. 92051014
	:	
v.	:	
	:	
WHITE GOLD, LLC,	:	
	:	
Respondent.	:	
_____	X	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Amended Petition for Cancellation is being served upon counsel for Respondent by mailing a true copy thereof by first class mail, postage prepaid, addressed to:

James H. Walters
Dellett & Walters
P.O. Box 82788
Portland, OR 97282-0788

on December 3, 2009.

/ggm/
Gianfranco G. Mitrione