

ESTTA Tracking number: **ESTTA375867**

Filing date: **10/29/2010**

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	Constellation Brands, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	207 High Point Drive Victor, NY 14564 UNITED STATES		

Attorney information	Stephen L. Baker Baker & Rannells, PA 575 Route 28, Suite 102 Raritan, NJ 08869 UNITED STATES officeactions@br-tmlaw.com,k.hnasko@br-tmlaw.com,l.kurth@br-tmlaw.com Phone:9087225640
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Registration Subject to Cancellation

Registration No	3478479	Registration date	07/29/2008
Registrant	Rudd Wines, Inc. P.O. Box 105 Oakville, CA 94562 UNITED STATES		

Goods/Services Subject to Cancellation

Class 033. First Use: 2007/11/01 First Use In Commerce: 2007/11/01 All goods and services in the class are cancelled, namely: Wine

Grounds for Cancellation

Genericness	Trademark Act section 23
Abandonment	Trademark Act section 14
The mark is merely descriptive	Trademark Act section 2(e)(1)

Attachments	petition to cancel.pdf (6 pages)(36914 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	/Stephen L. Baker/
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Name	Stephen L. Baker
Date	10/29/2010

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

In the Matter of Registration No. 3478479
Registered: July 29, 2008

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Constellation Brands, Inc.

Petitioner

v.

Rudd Wines, Inc.

Registrant
-----X

Cancellation No.:

Mark: MIXED BLACKS

Reg. No.: 3478479

Filed: March 19, 2008

Issued: July 29, 2008

**PETITION FOR CANCELLATION
PURSUANT TO 15 U.S.C. SECTION 1064(a)**

In the matter of trademark Reg. No. 3478479 for MIXED BLACKS for Wine ("Registrant's Goods") in Int. Class 033, issued to Rudd Wines, Inc. ("Registrant") on July 29, 2008, Constellation Brands, Inc., ("Petitioner") a corporation organized and existing under the laws of Delaware, located and doing business at 207 High Point Drive, Building 100, Victor, New York, 14564, believes that it will be damaged by the continued registration of MIXED BLACKS as Registrant's mark and hereby petitions to cancel said registration pursuant to 15 U.S.C. §1064 (Trademark Act of 1946, §14).

As grounds of cancellation, it is alleged that:

THE PETITIONER

1. Petitioner owns or controls many leading consumer-preferred U.S. wine brands, including: Woodbridge by Robert Mondavi, Clos du Bois, Robert Mondavi Private Selection, Ravenswood, Blackstone, Toasted Head, Franciscan Estate, Robert Mondavi Winery, Simi, Estancia and Arbor. Mist.
2. Petitioner is the leading wine producer in the world and the leading premium wine company in the U.S.
3. Among the wines produced or that may in the future be produced by Petitioner and its related companies are a wide variety of red wines and red wine blends, including blends that are commonly referred to as “mixed blacks”.
4. Petitioner has a right equal to that of Registrant to use “mixed blacks” to describe its red wine blends.

THE REGISTRANT AND THE REGISTRATION SOUGHT TO BE CANCELED

5. Upon information and belief, Registrant is a corporation having a business address at P. O. Box 105, Oakville, CA 94562.
6. U.S. Registration No. 3478479 issued July 29, 2008 to Rudd Wines, Inc.
7. The Registration covers the trademark MIXED BLACKS, for Wine in International Class 033.

AS AND FOR A FIRST CAUSE OF ACTION

8. Upon information and belief, the Registrant has abandoned the mark covered by the Registration. The Cancellation is, therefore, appropriate under Section 14(3) of the Lanham Act, 15 U.S.C. Section 1064(3).
9. Upon information and belief, Registrant has discontinued use of the mark covered by the Registration. Upon further information and belief, Registrant intends not to resume of such mark.
10. Upon information and belief, the Registrant has not used the mark covered by the Registration for at least three (3) years.
11. Registrant's failure to make use of its alleged mark in the United States for a period of three (3) years is *prima facie* evidence of abandonment.
12. Upon information and belief, the sole use by Registrant of MIXED BLACKS was on a 2003 EDGE HILL Napa Valley red wine, of which only 90 cases were produced.
13. Registrant has abandoned the mark MIXED BLACKS in the United States and its U.S. Reg. No. 3478479 therefor.

AS AND FOR A SECOND CAUSE OF ACTION

14. Alternatively, Petitioner seeks to cancel the registration for MIXED BLACKS on the basis that the same is descriptive of the goods recited in the registration.
15. Upon information and belief, Registrant, when it applied to register MIXED BLACKS on the Supplemental Register, conceded that the mark

is descriptive of the goods set forth in the registration sought to be cancelled.

16. Upon information and belief, the back label applied to Registrant's goods sold under the designation BLACK REDS stated, "Inspired by this legacy, we planted five acres of vineyard on the St. Helen estate in a **Mixed-Blacks combination** (emphasis added) Zinfandel, Petite Sirah, Grenache, Mouvedre, Carignane, and Alicante Boushet."
17. Upon information and belief, Zinfandel, Petite Sirah, Grenache, Mouvedre, Carignane, and Alicante Boushet are grape varieties commonly known as "blacks."
18. Upon information and belief the relevant consumer/public associates "mixed blacks" with red wine blends.
19. Petitioner, as a producer and purveyor of wine, including red wine blends, is being harmed by the continued registration to Registrant of a mark which is descriptive of the red wine blends, as the same will create a cloud on Petitioner's right to use the term "Mixed Blacks " to describe red wine blends.

AS AND FOR A SECOND ALTERNATIVE CLAIM FOR RELIEF

20. Alternatively, Petitioner seeks to cancel the registration for MIXED BLACKS on the basis that the term is a generic term for a blend of red wines.
21. Petitioner, as a producer and purveyor of wine, including red wine blends is being harmed by the continued registration to Registrant of a mark

which is a generic term for a blend of red wines, as the same will create a cloud on Petitioner's right to use the term "MIXED BLACKS" as a generic term for blends of red wine of that name.

22. The continued existence of Reg. No. 3478479 creates a serious cloud on Petitioner's continued right to us , alone or in combination, for the goods set forth in its application.

23. Petitioner believes that it is and will be damaged by the continued registration of the mark to Registrant.

24. Upon information and belief, the domestic representative to be served is:

ANGIE GREGORY
2416 E 37TH ST N
WICHITA, KS 67219-3538

WHEREFORE, Petitioner prays that Reg. No. 3478479 for the mark MIXED BLACKS be canceled.

/s/Linda Kurth
Stephen L. Baker
Linda Kurth
Baker & Rannells, PA
Attorneys for Petitioner
575 Route 28, Suite 102
Raritan, New Jersey 08869
Tel. 908-722-5640
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Email s.baker@br-tmlaw.com

Date: October 29, 2010

CERTIFICATE OF SERVICE

I hereby certify that a copy of Petitioner's Petition to Cancel Registration Number 3478479 for the mark MIXED BLACKS was forwarded by email and first class mail, postage prepaid, on this 29th day October, 2010 to the attorney for the Registrant at the following address:

ANGIE GREGORY
2416 E 37TH ST N
WICHITA, KS 67219-3538
angie.gregory@lrico.com

/s/ Linda Kurth
Linda Kurth