

ESTTA Tracking number: **ESTTA504070**

Filing date: **11/06/2012**

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	Skyy Spirits, LLC d/b/a Campari America		
Entity	Corporation	Citizenship	Delaware
Address	One Beach Street San Francisco, CA 94133 UNITED STATES		

Attorney information	Joel R. Feldman, Esq. Greenberg Traurig, LLP 3333 Piedmont Rd., NE, Suite 2500 Atlanta, GA 30305 UNITED STATES atltrademark@gtlaw.com, feldmanjoel@gtlaw.com Phone:678-553-4778		
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Registration Subject to Cancellation

Registration No	3753238	Registration date	02/23/2010
Registrant	Cloverdale Foods Company 3015 34th Street NW Mandan, ND 58554 UNITED STATES		

Goods/Services Subject to Cancellation

Class 029. First Use: 2009/02/24 First Use In Commerce: 2009/02/24 All goods and services in the class are cancelled, namely: Fully cooked pork rib
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Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2598839	Application Date	04/11/2000
Registration Date	07/23/2002	Foreign Priority Date	NONE
Word Mark	RUSSELL'S RESERVE		

Design Mark	RUSSELL'S RESERVE
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2000/09/00 First Use In Commerce: 2000/09/00 WHISKEY, NAMELY, BOURBON

Attachments	76023463#TMSN.gif (1 page)(bytes) RUSSELL'S RESERVE.pdf (10 pages)(161956 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	/jrf/
Name	Joel R. Feldman, Esq.
Date	11/06/2012

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

In the matter of U.S. Trademark Registration No. 3,753,238
For the mark RUSSELL'S RESERVE
Registered: February 23, 2012

)	
SKYY SPIRITS, LLC D/B/A)	
CAMPARI AMERICA,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. _____
)	
CLOVERDALE FOODS COMPANY,)	
)	
Respondent.)	
)	

PETITION TO CANCEL

Skyy Spirits, LLC d/b/a Campari America (Campari America) believe that it will be damaged by U.S. Trademark Registration No. 3,753,238 (the "Registration") and therefore files this petition to cancel the Registration in its entirety.

The grounds for cancellation are:

BACKGROUND

1. Petitioner Campari America is a Delaware limited liability company with an address of One Beach Street, San Francisco, CA 94133.
2. Campari America is the successor in interest to trademarks previously owned by Rare Breed Distilling, LLC, a Delaware limited liability company. Rare Breed Distilling, LLC assigned all of its interest in the WILD TURKEY and RUSSELL'S RESERVE brands to Campari America on January 1, 2012.
3. According to the USPTO records, Respondent Cloverdale Foods Company is a

North Dakota corporation with an address of 3015 34th Street NW, Mandan, North Dakota 58554.

4. Respondent obtained U.S. Trademark Registration No. 3,753,238 for the mark RUSSELL'S RESERVE in International Class 29 for fully cooked pork rib on February 23, 2010.

**CAMPARI AMERICA'S USE AND REGISTRATION
OF THE RUSSELL'S RESERVE BRAND**

5. Since 2000, Campari America and its predecessors in interest have used the mark RUSSELL'S RESERVE as a variety of WILD TURKEY-brand bourbon whiskey.

6. The RUSSELL'S RESERVE mark was coined as a tribute to WILD TURKEY Master Distiller Jimmy Russell.

7. RUSSELL'S RESERVE-brand bourbon is a hand-crafted small-batch Kentucky bourbon whiskey available in six-year and ten-year varieties.

8. The RUSSELL'S RESERVE mark is an arbitrary mark for bourbon whiskey and spirits in general.

9. The RUSSELL'S RESERVE mark is a commercially-strong mark entitled to a broad scope of protection.

10. Campari America owns U.S. Reg. No. 2,598,839 for RUSSELL'S RESERVE in International Class 33 for whiskey, namely, bourbon (TSDR record attached at Exhibit 1).

11. U.S. Reg. No. 2,598,839 is a valid and subsisting United States trademark registration.

12. Campari America's registration for the RUSSELL'S RESERVE mark gives Campari America priority in the RUSSELL'S RESERVE mark since April 11, 2000.

**COUNT I
PRIORITY AND LIKELIHOOD OF CONFUSION**

13. Respondent filed its application for RUSSELL'S RESERVE on February 16, 2009, over eight years after Campari America began using RUSSELL'S RESERVE for bourbon

whiskey.

14. Respondent's registered RUSSELL'S RESERVE mark is identical to Campari America's RUSSELL'S RESERVE mark.

15. The International Class 29 goods identified in the Registration, fully-cooked pork ribs, are highly related to Campari America's RUSSELL'S RESERVE-branded International Class 33 goods, bourbon whiskey, because these goods are often sold by the same retailers and restaurants.

16. The relatedness of fully-cooked pork ribs and bourbon whiskey is enhanced by the common use of bourbon whiskey as an ingredient in sauces used for pork ribs.

17. Respondent's continued use and registration of the mark RUSSELL'S RESERVE is likely to cause confusion, mistake, and deception as to the source of Respondent's goods within the meaning of 15 U.S.C. §§ 1114 and 1125(a).

18. Respondent's continued use and registration of the mark RUSSELL'S RESERVE will injure and damage Campari America and the goodwill and reputation symbolized by Campari America's RUSSELL'S RESERVE mark within the meaning of 15 U.S.C. § 1063(a).

19. Based on the identity of the Respondent's and Campari America's marks and the relatedness of Respondent's RUSSELL'S RESERVE-branded goods and Campari America's RUSSELL'S RESERVE-branded goods, the public is likely to incorrectly believe that Respondent's RUSSELL'S RESERVE-branded fully-cooked pork ribs are in some way connected to Campari America. This confusion will cause irreparable damage to Campari America.

20. The Registration should not be allowed under 15 U.S.C. § 1052(d), because the registered mark resembles a mark previously used in the United States by Campari America and

is likely to cause confusion, mistake, or to deceive.

CONCLUSION

21. Campari America respectfully requests that U.S. Trademark Registration No. 3,753,238 be cancelled and that this Petition to Cancel be sustained.

Date: November 6, 2012

Respectfully submitted,
GREENBERG TRAURIG, LLP



Joel R. Feldman, Esq.
Kristen L. Fancher, Esq.


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*Attorneys for Petitioner Skyy Spirits, LLC
d/b/a Campari America*

CERTIFICATE OF ELECTRONIC TRANSMISSION

Date: November 6, 2012

I certify that this Petition to Cancel is being transmitted electronically to the Trademark Trial and Appeal Board of the United States Patent & Trademark Office, on the date indicated above, through the ESTTA electronic filing system at the web site <http://estta.uspto.gov/>.

By: 

Joel R. Feldman, Esq.


CERTIFICATE OF SERVICE

I certify that on November 6, 2012 I served this Petition to Cancel by first-class mail to:

Cloverdale Foods Company
3015 34th Street NW
Mandan, ND 58554

with a courtesy copy to:

Emily J. Cooper
Holland & Hart LLP
One Boulder Plaza
1800 Broadway, Suite 300
Boulder, CO 80302

By: 

Joel R. Feldman, Esq.

Exhibit 1

STATUS		DOCUMENTS		Back to Search	Print
Generated on: This page was generated by TSDR on 2012-11-06 18:05:25 EST					
Mark: RUSSELL'S RESERVE RUSSELL'S RESERVE					
US Serial Number:	76023463	Application Filing Date:	Apr. 11, 2000		
US Registration Number:	2598839	Registration Date:	Jul. 23, 2002		
Register:	Principal				
Mark Type:	Trademark				
Status:	The registration has been renewed.				
Status Date:	Aug. 04, 2012				
Publication Date:	Jan. 30, 2001	Notice of Allowance Date:	Apr. 24, 2001		
▼ Mark Information ▲ Collapse All					
Mark Literal Elements:	RUSSELL'S RESERVE				
Standard Character Claim:	No				
Mark Drawing Type:	1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)				
Disclaimer:	"RESERVE"				
▼ Goods and Services					
Note: The following symbols indicate that the registrant/owner has amended the goods/services: • Brackets [...] indicate deleted goods/services; • Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and • Asterisks *.* identify additional (new) wording in the goods/services.					
For:	WHISKEY, NAMELY, BOURBON				
International Class:	033 - Primary Class	U.S Class:	047, 049		
Class Status:	ACTIVE				
Basis:	1(a)				
First Use:	Sep. 2000	Use in Commerce:	Sep. 2000		
▼ Basis Information (Case Level)					
Filed Use:	No	Currently Use:	Yes	Amended Use:	No
Filed ITU:	Yes	Currently ITU:	No	Amended ITU:	No
Filed 44D:	No	Currently 44D:	No	Amended 44D:	No
Filed 44E:	No	Currently 44E:	No	Amended 44E:	No
Filed 66A:	No	Currently 66A:	No		
Filed No Basis:	No	Currently No Basis:	No		
▼ Current Owner(s) Information					
Owner Name:	SKYY SPIRITS, LLC				
DBA, AKA, Formerly:	DBA CAMPARI AMERICA				
Owner Address:	ONE BEACH STREET, SUITE 300 SAN FRANCISCO, CALIFORNIA 94133 UNITED STATES				
Legal Entity Type:	LIMITED LIABILITY COMPANY	State or Country Where Organized:	DELAWARE		
▼ Attorney/Correspondence Information					
Attorney of Record					

Attorney Name: James Wesley Kinnear	Docket Number: 70429-1024
Correspondent	
Correspondent Name/Address: James Wesley Kinnear Jeffer Mangels Butler & Mitchell LLP TWO EMBARCADERO CENTER, 5TH FLOOR SAN FRANCISCO, CALIFORNIA 94111 UNITED STATES	
Phone: (415) 398-8080	Fax: (415) 398-5584
Correspondent e-mail: trademarkdocket@jmbm.com	Correspondent e-mail Authorized: Yes
Domestic Representative - Not Found	

▼ Prosecution History

Date	Description	Proceeding Number
Oct. 24, 2012	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Oct. 24, 2012	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Aug. 04, 2012	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
Aug. 04, 2012	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	69934
Aug. 04, 2012	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	69934
Jul. 18, 2012	TEAS SECTION 8 & 9 RECEIVED	
Apr. 04, 2012	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Mar. 24, 2010	ATTORNEY REVOKED AND/OR APPOINTED	
Mar. 24, 2010	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Sep. 03, 2009	ATTORNEY REVOKED AND/OR APPOINTED	
Sep. 03, 2009	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Jul. 08, 2009	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Apr. 15, 2008	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Apr. 14, 2008	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Nov. 02, 2007	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Nov. 02, 2007	CASE FILE IN TICRS	
Aug. 24, 2007	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	69934
Aug. 14, 2007	ASSIGNED TO PARALEGAL	69934
Jul. 24, 2007	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	
Jul. 24, 2007	TEAS SECTION 8 & 15 RECEIVED	
Aug. 11, 2005	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Aug. 11, 2005	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Jul. 23, 2002	REGISTERED-PRINCIPAL REGISTER	
Apr. 09, 2002	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Apr. 09, 2002	ASSIGNED TO EXAMINER	72620
Nov. 19, 2001	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Sep. 24, 2001	NON-FINAL ACTION MAILED	
Sep. 19, 2001	ASSIGNED TO EXAMINER	74307
Aug. 24, 2001	STATEMENT OF USE PROCESSING COMPLETE	
Aug. 24, 2001	USE AMENDMENT FILED	
Apr. 24, 2001	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Jan. 30, 2001	PUBLISHED FOR OPPOSITION	
Dec. 29, 2000	NOTICE OF PUBLICATION	
Sep. 27, 2000	APPROVED FOR PUB - PRINCIPAL REGISTER	
Sep. 26, 2000	EXAMINER'S AMENDMENT MAILED	
Sep. 22, 2000	ASSIGNED TO EXAMINER	74307

▼ Maintenance Filings or Post Registration Information

Affidavit of Continued Use:	Section 8 - Accepted	
Affidavit of Incontestability:	Section 15 - Accepted	
Renewal Date:	Jul. 23, 2012	
▼ TM Staff and Location Information		
TM Staff Information - None		
File Location		
Current Location:	Not Found	Date in Location: Aug. 04, 2012
▼ Assignment Abstract of Title Information		
Summary		▼ Conveyance Filter
Total Assignments:	2	Registrant: AUSTIN, NICHOLS & CO., Incorporated
Assignment 1 of 2		
Conveyance:	ASSIGNS THE ENTIRE INTEREST	
Reel/Frame:	4016/0031	Pages: 5
Date Recorded:	Jul. 01, 2009	
Supporting Documents:	assignment-tm-4016-0031.pdf	
Assignor		
Name:	AUSTIN, NICHOLS & CO., INCORPORATED	Execution Date: May 29, 2009
Legal Entity Type:	CORPORATION	State or Country Where Organized: DELAWARE
Assignee		
Name:	RARE BREED DISTILLING LLC	
Legal Entity Type:	LIMITED LIABILITY COMPANY	State or Country Where Organized: DELAWARE
Address:	ONE BEACH STREET, SUITE 300 SAN FRANCISCO, CALIFORNIA 94133	
Correspondent		
Correspondent Name:	ROSEMARY S. TARLTON	
Correspondent Address:	MORRISON & FOERSTER LLP, 425 MARKET ST. SAN FRANCISCO, CA 94105-2482	
Domestic Representative - Not Found		
Assignment 2 of 2		
Conveyance:	MERGER EFFECTIVE 01/01/2012	
Reel/Frame:	4744/0469	Pages: 5
Date Recorded:	Mar. 28, 2012	
Supporting Documents:	assignment-tm-4744-0469.pdf	
Assignor		
Name:	RARE BREED DISTILLING, LLC	Execution Date: Nov. 16, 2011
Legal Entity Type:	LIMITED LIABILITY COMPANY	State or Country Where Organized: DELAWARE
Assignee		
Name:	SKYY SPIRITS, LLC	
Legal Entity Type:	LIMITED LIABILITY COMPANY	State or Country Where Organized: DELAWARE
Address:	ONE BEACH STREET, SUITE 300 SAN FRANCISCO, CALIFORNIA 94133	
		DBA, AKA, TA, Formerly: DBA CAMPARI AMERICA
Correspondent		
Correspondent Name:	JOEL R. FELDMAN, ESQ.	
Correspondent Address:	3290 NORTHSIDE PARKWAY, SUITE 400 ATLANTA, GA 30327	

Domestic Representative - Not Found