

ESTTA Tracking number: **ESTTA509503**

Filing date: **12/06/2012**

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	Iron Horse, Brewery I, Inc.		
Entity	Corporation	Citizenship	Washington
Address	1000 N. Prospect Street, Suite 4 Ellensburg, WA 98926 UNITED STATES		

Attorney information	Thomas "TD" Foster TDFoster - Intellectual Property Law 12626 High Bluff Drive, Suite 150 San Diego, CA 92130 UNITED STATES foster@tdfoster.com Phone:858.922.2170		
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Registration Subject to Cancellation

Registration No	3905691	Registration date	01/11/2011
Registrant	Jump Brands, LLC 1970 112th Circ NE Blaine, MN 55449 UNITED STATES		

Goods/Services Subject to Cancellation

Class 032. First Use: 2009/10/25 First Use In Commerce: 2009/10/25 All goods and services in the class are cancelled, namely: Flavored, Brewed Malt-Based Alcoholic Beverages in the Nature of Beer
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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. Application No.	85632372	Application Date	05/22/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HIGH FIVE HEFE.		

Design Mark	HIGH FIVE HEFE.
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 2008/06/06 First Use In Commerce: 2008/12/31 Beer

Attachments	85632372#TMSN.jpeg (1 page)(bytes) 6373.004-02 20121206 CANCELLATION PETITION.pdf (4 pages)(40646 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 Overnight Courier on this date.

Signature	/Thomas "TD" Foster/
Name	Thomas "TD" Foster
Date	12/06/2012

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

_____)	
Iron Horse Brewery I, Inc.)	
)	
Petitioner,)	Cancellation No.:
v)	
)	Reg. No.: 3905691
Jump Brands, LLC)	
)	
Respondent.)	
_____)	

PETITION TO CANCEL

In the matter of U.S. Trademark Registration No. 3905691 covering the mark HIGH FIVE & Design registered on January 11, 2011, on the Principal Register, by Jump Brands, LLC. (“Respondent”), a limited liability company formed under the laws of the State of Minnesota, having an address of 1970- 112th Circ NE Blaine, Minnesota 55449.

Iron Horse, Brewery I, Inc. (“Petitioner”), a corporation formed under the laws of the State of Washington, having an address of 1000 N. Prospect Street, Suite 4, Ellensburg, Washington 98926, believes that it is damaged by Registration No. 3905691 and hereby petitions for cancellation of the registered mark HIGH FIVE & Design.

The grounds for cancellation against the registration, on information and belief, are as follows:

1. Registrant has obtained registration of the mark HIGH FIVE & Design in International Class 032 for “flavored, brewed malt-based alcoholic beverages in the nature of beer.” Said Registration No. 3905691 was issued on January 11, 2011, alleging first use and first use in commerce on October 25, 2009. The filing date of the HIGH FIVE & Design application

was on March 8, 2010.

2. Petitioner commenced use of the HIGH FIVE HEFE mark on or before June 6, 2008, and commenced use of the HIGH FIVE HEFE mark in commerce on or before December 31, 2008 to promote and sell goods consisting of “beer”.

3. Upon information and belief, Registrant filed its trademark application on March 8, 2010, approximately twenty-one months after Petitioner commenced use of the HIGH FIVE HEFE mark for similar, if not identical, goods. Petitioner's use of the mark HIGH FIVE HEFE began long prior to the filing date and asserted date of first use of the HIGH FIVE & Design mark registered by the Registrant. Upon information and belief, Petitioner is the prior user of the HIGH FIVE HEFE mark.

4. Registration No. 3905691 sought to be cancelled includes goods that are closely related, if not identical, to those offered by the Petitioner. The goods offered and sold by Petitioner under its HIGH FIVE HEFE mark and name are likely to be purchased and used by the same class of purchasers who are likely to purchase Respondent's goods. In addition, the goods of Petitioner and Respondent are apt to be marketed through the same and related channels of trade.

5. Petitioner has expended considerable effort and expense in promoting its HIGH FIVE HEFE trademark and the goods offered in connection with the mark, with the result that the purchasing public has come to know, rely upon, and recognize the goods of Petitioner by such mark.

6. If the Registrant is permitted to retain the registration sought to be cancelled, and thereby, the *prima facie* exclusive right to use in commerce the HIGH FIVE & Design mark in connection with closely related, if not identical goods, confusion in the trade and amongst

consumers is likely to result from any concurrent use of Petitioner's mark and that of the Registrant, to the detriment of Petitioner, who has expended considerable sums and effort in promoting its mark.

7. Consumers are likely to consider the goods of the Registrant offered under the HIGH FIVE & Design mark as emanating from Petitioner, resulting in loss of sales to Petitioner.

8. If Registrant is permitted to retain the registration sought to be cancelled, a cloud will be placed on Petitioner's title in and to its trademark and on its right to enjoy the free and exclusive use thereof in connection with the offering of its goods, all to the injury of Petitioner.

9. Petitioner is further being injured by the existence of Registration No. 3905691, in that Petitioner has filed federal Trademark Application Serial No. 85632372 to protect its mark, which protection has been denied because of the existence of Registration No. 3905691.

WHEREFORE, Petitioner deems it is being damaged, and, by and through its counsel, respectfully prays that the mark registered by Respondent in Registration No. 3905691 be cancelled, and that this Petition be granted.

Respectfully submitted,

Iron Horse Brewery I, Inc., Petitioner

Date: December 6, 2012

By /Thomas D. Foster/

Thomas D. Foster, Esq. (Reg. No. 44686)
TDFoster - Intellectual Property Law
Counsel for Petitioner
12626 High Bluff Drive, Suite 150
San Diego, California 92130
Phone: 858-922-2170
Facsimile: 858-720-1990

CERTIFICATE OF SERVICE

I hereby certify that one copy of the foregoing Petition to Cancel is being forwarded this 6th day of December, 2012 on information and belief to Counsel for Respondents by Federal Express courier and addressed to:

Wayne A. Sivertson, Partner
NAWROCKI, ROONEY & SIVERTSON, P.A.
3433 Broadway St, NE Suite 402
Minneapolis, MN 55413-3009

I further certify that one copy of the foregoing Petition to Cancel is being forwarded this 6th day of December, 2012 to the Respondent by Federal Express courier at the following addresses:

Mr. Donovan Sienko
Jump Brands, LLC
1970 112th Circ NE
Blaine, MN 55449

Date: December 6, 2012

By /Thomas D. Foster/