

ESTTA Tracking number: **ESTTA546509**

Filing date: **07/02/2013**

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	Uinta Brewing Company		
Entity	Corporation	Citizenship	Utah
Address	1722 South Fremont Drive Salt Lake City, UT 84104 UNITED STATES		

Attorney information	Glenn A. Rice FUNKHOUSER VEGOSEN LIEBMAN & DUNN LTD. 55 W. Monroe, Suite 2300 Chicago, IL 60603 UNITED STATES grice@fvldlaw.com Phone:312 701-6895
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Registration Subject to Cancellation

Registration No	3955799	Registration date	05/03/2011
Registrant	Lohring, Christopher 19 Carlton Street Salem, MA 01970 UNITED STATES		

Goods/Services Subject to Cancellation

Class 032. First Use: 2010/05/01 First Use In Commerce: 2010/05/01 All goods and services in the class are cancelled, namely: Beer, ale, lager, stout and porter; De-alcoholised beer
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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
Other	Non-use; lack of bona fide intent

Attachments	Notch_Petition_to_Cancel_vF.pdf(22838 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	/Glenn Rice/
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Name	Glenn A. Rice
Date	07/02/2013

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

In the matter of trademark Registration No. 3,955,799

For the mark NOTCH

UINTA BREWING COMPANY,

Petitioner,

v.

CHRISTOPHER LOHRING,

Registrant.

PETITION TO CANCEL

Petitioner Uinta Brewing Company is a Utah corporation doing business at 1722 South Fremont Drive, Salt Lake City, Utah 84104.

To the best of Petitioner's knowledge, the name of the current owner of the above-identified registration is Christopher Lohring, whose last reported address is 19 Carlton Street, Salem, Massachusetts 01970.

Petitioner believes that it will be damaged by the continued registration of the above-identified registration and hereby petitions to cancel the same on the grounds stated below:

1. Petitioner is engaged in the business of producing and selling craft beer and is owner of the trademark HOP NOTCH for beer.

2. The HOP NOTCH mark is of significant value to Petitioner as an identification of the source and origin of Petitioner's beer and it serves to distinguish Petitioner's beer from those of others. Petitioner has developed substantial goodwill and value in its HOP NOTCH trademark.

3. Registrant has sent Petitioner cease and desist correspondence regarding its HOP NOTCH mark wherein Registrant relies upon Registration No. 3,955,799, which stands in the name of Registrant, for the mark NOTCH for beer.

4. On March 10, 2010, Registrant filed Application Serial No. 77958348 for the mark NOTCH with the U.S. Patent and Trademark Office on an “intent-to-use” basis pursuant to Section 1(b) of the Trademark Act for: “Beer, ale, lager, stout and porter; De-alcoholised beer.”

NON-USE OF THE MARK

5. Petitioner repeats and re-alleges each and every allegation contained in paragraphs 1-4 as if fully set forth herein.

6. On March 4, 2011, Registrant filed a Statement of Use claiming use in commerce of the mark NOTCH for “all goods” listed in Application Serial No. 77958348. The Statement of Use was verified on behalf of Applicant by Applicant’s attorney under the declaration that “all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.”

7. Registrant had not made use of his mark in commerce for all goods listed in Application Serial No. 77958348 as of the filing of his Statement of Use with the Patent and Trademark Office. Accordingly, the registration is void for non-use and must be cancelled.

8. By reason of the foregoing, Registrant’s continued ownership of Registration No. 3,955,799 is damaging to Petitioner.

LACK OF BONA FIDE INTENT

9. Petitioner repeats and re-alleges each and every allegation contained in paragraphs 1-4 as if fully set forth herein.

10. On information and belief, at the time Application Serial No. 77958348 was filed, Registrant lacked a *bona fide* intent to use NOTCH in commerce in connection with all of the goods. Accordingly, the registration is void and must be cancelled.

11. By reason of the foregoing, Registrant's continued ownership of Registration No. 3,955,799 is damaging to Petitioner.

FRAUD

12. Petitioner repeats and re-alleges each and every allegation contained in paragraphs 1-7 as if fully set forth herein.

13. Registrant knew at the time of filing of the Statement of Use that his statement that the mark NOTCH had been used in commerce for all goods listed in Application Serial No. 77958348 was false, the statement was material and it was made with intent to deceive the U.S. Patent and Trademark Office.

14. Registrant knew at the time of filing of his Statement of Use, for example, that Registrant had not used, and had not used in commerce, the NOTCH mark for such goods as de-alcoholised beer or porter.

15. By reason of the foregoing, the registration is void and Registrant's continued ownership of Registration No. 3,955,799 is damaging to Petitioner.

ABANDONMENT

16. Petitioner repeats and re-alleges each and every allegation contained in paragraphs 1-4 as if fully set forth herein.

17. On information and belief, and alternatively, even if Registrant had made use of the mark in commerce for all goods listed in Application Serial No. 77958348 prior to the filing of his Statement of Use, Registrant has abandoned the mark NOTCH by discontinuing such use

with no intent to resume use thereof. Accordingly, and alternatively, the registration should be cancelled on the ground of abandonment.

18. By reason of the foregoing, Registrant's continued ownership of Registration No. 3,955,799 is damaging to Petitioner.

Please address all correspondence to Glenn A. Rice at Funkhouser Vegosen Liebman & Dunn Ltd., 55 W. Monroe, Suite 2300, Chicago, Illinois 60603.

Respectfully submitted,

UINTA BREWING COMPANY, Petitioner

Dated: July 2, 2013

/s/Glenn A. Rice

Counsel for Petitioner

Glenn A. Rice, Esq.
**FUNKHOUSER VEGOSEN LIEBMAN
& DUNN LTD.**
55 West Monroe Street, Suite 2300
Chicago, Illinois 60603
(312) 701-6800
Counsel for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has caused the foregoing **Petition to Cancel** to be served upon Registrant in these proceedings by depositing a true copy of the same with the United States Postal Service as first class mail in a sealed envelope, first-class postage prepaid, addressed to:

Christopher Lohring
19 Carlton Street
Salem, Massachusetts 01970

Daniel N. Smith, Esq.
New England Patent & Trademark
One Salem Green, Suite 405
Salem, Massachusetts 01970

on this 2nd day of July, 2013.

/s/Glenn A. Rice

Attorney for Petitioner
Uinta Brewing Company