

ESTTA Tracking number: **ESTTA553048**

Filing date: **08/08/2013**

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	Round Hill Cellars d/b/a Rutherford Wine Company		
Entity	Corporation	Citizenship	California
Address	1680 Silverado Trail St. Helena, CA 94574 UNITED STATES		

Attorney information	J. Scott Gerien Dickenson, Peatman & Fogarty 1455 First Street, Ste. 301 Napa, CA 94559 UNITED STATES tmdept@dpf-law.com Phone:707-252-7122		
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Registration Subject to Cancellation

Registration No	4265402	Registration date	12/25/2012
Registrant	Cape Wine Ventures, LLC % Taylor, Feil Harper, Lumsden & Hess PC 3340 Peachtree Road NE, Suite 250 Atlanta, GA 30326 UNITED STATES		

Goods/Services Subject to Cancellation

Class 033. First Use: 2011/10/28 First Use In Commerce: 2011/10/28 All goods and services in the class are cancelled, namely: Wine

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.	4292641	Application Date	11/30/2009
Registration Date	02/19/2013	Foreign Priority Date	NONE
Word Mark	RED BANDANA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2012/11/13 First Use In Commerce: 2012/11/13		

	Alcoholic beverages except beers
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Attachments	bandana.pdf(305067 bytes)
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Certificate of Service

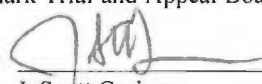
The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/J. Scott Gerien/
Name	J. Scott Gerien
Date	08/08/2013

Certificate of Electronic Filing

I hereby certify that this correspondence is being electronically filed with the Trademark Trial and Appeal Board through the ESTTA system located at <<http://estta.uspto.gov>>.

Dated: 8/8/13

By 
J. Scott Gerien

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

Round Hill Cellars d/b/a Rutherford Wine
Company,

Petitioner,

vs.

Cape Wine Ventures, LLC,

Registrant.

CANCELLATION NO.

PETITION FOR CANCELLATION

TO THE COMMISSIONER OF TRADEMARKS:

Round Hill Cellars d/b/a Rutherford Wine Company, a corporation organized under the laws of the State of California and located at 1680 Silverado Trail, St. Helena, California 94574 ("**Petitioner**"), believes it is being damaged by registration of the mark BANDANA for wine shown in U.S. Trademark Registration No. 4,265,402 (the "**BANDANA Registration**"), owned by Cape Wine Ventures, a Florida limited liability company ("**Registrant**"), and hereby petitions to cancel the BANDANA Registration.

Solely for the purpose of this proceeding, Petitioner alleges the following as grounds for cancellation:

1 1. Registrant's U.S. Trademark Registration for BANDANA for wine in Class 33
2 (Reg. No. 4,265,402) was issued on December 25, 2012. Registrant's constructive first use of
3 the BANDANA mark is September 1, 2011 and the alleged first use of this mark in commerce is
4 October 28, 2011.

5 2. Petitioner owns U.S. Trademark Registration No. 4,292,641 issued on
6 February 19, 2013, for the mark RED BANDANA for alcoholic beverages except beers in
7 International Class 33 with a first use date of November 13, 2012, and a filing date of November
8 30, 2009, which filing date precedes the filing date of the BANDANA Registration or any known
9 date of first use of the BANDANA mark for wine by Registrant.

10 3. Petitioner has continuously used the trademark RED BANDANA in association
11 with wine and the offering of wine for sale throughout the United States since as early as
12 November 13, 2012.

13 4. Petitioner alleges that Registrant's BANDANA mark is likely to cause confusion,
14 mistake or to deceive the public. Petitioner's RED BANDANA mark for alcoholic beverages
15 except beers is nearly identical to Registrant's BANDANA mark for wine, differing merely by
16 Petitioner's use of the descriptive leading term RED, and the respective goods on which the
17 marks are used are identical, substantially similar or related and said goods are purchased by the
18 same group of consumers. Accordingly, Registrant's BANDANA mark is confusingly similar to
19 Petitioner's mark such that Registrant is not entitled to the continued registration of its
20 BANDANA mark and Registrant's BANDANA Registration should therefore be cancelled in
21 accordance with Section 2(d) of the Trademark Act of 1946, 15 U.S.C. §1052(d).

22 5. Accordingly, Petitioner avers that for the reasons aforesaid, it will be damaged by
23 the continued registration of Registrant's BANDANA mark.

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WHEREFORE, Petitioner prays as follows:

- 1. That this petition be sustained; and
- 2. That registration of the trademark BANDANA shown and specified in U.S. Trademark Registration No. 4,265,402 be cancelled.

Dated: August 8, 2013

Respectfully submitted,
DICKENSON, PEATMAN & FOGARTY

By: 
J. Scott Gerien

1455 First Street, Suite 301
Napa, California 94559
Telephone: (707) 252-7122
Facsimile: (707) 255-6876

Attorneys for Petitioner
Round Hill Cellars
d/b/a Rutherford Wine Company

PROOF OF SERVICE

I declare that I am over the age of 18 years, employed in the County of Napa, and not a party to the within action; my business address is 1455 First Street, Suite 301, Napa, California 94559. On August 8, 2013, I served the attached **PETITION FOR CANCELLATION** on the person(s) listed below:

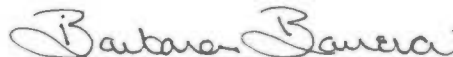
**JEFFREY A. SADOWSKI, ESQ.
HOWARD & HOWARD ATTORNEYS PLLC
450 W 4TH ST
ROYAL OAK, MI 48067**

**CAPE WINE VENTURES, LLC
C/O TAYLOR, FEIL HARPER, LUMSDEN & HESS PC
3340 PEACHTREE ROAD NE, SUITE 250
ATLANTA, GA 30326**

by enclosing a true copy in a sealed envelope addressed as shown above and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed August 8, 2013, at Napa, California.



Barbara Barrera
Legal Secretary