

ESTTA Tracking number: **ESTTA572547**

Filing date: **11/22/2013**

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	APU XK		
Entity	Joint Stock Company	Citizenship	Mongolia
Address	APU Building, Chinggis Avenue 14 Khan-Uul District Ulaanbaatar, 17040 MONGOLIA		

Attorney information	ELIZABETH A LINFORD LADAS & PARRY LLP 5670 Wilshire Boulevard Suite 2100 Los Angeles, CA 90036 UNITED STATES elinford@la.ladas.com Phone:323-934-2300
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### Registration Subject to Cancellation

Registration No	3949134	Registration date	04/19/2011
Registrant	Tenggis Co., Ltd. 1117 South Bedford str. #201 Los Angeles, CA 90035 CANADA		

### Goods/Services Subject to Cancellation

Class 032. First Use: 2004/07/11 First Use In Commerce: 2004/07/15 All goods and services in the class are cancelled, namely: 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

Attachments	Petition to Cancel 3949134.pdf(122038 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	/elizabeth a linford/
Name	ELIZABETH A LINFORD

Date	11/22/2013
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Petition to Cancel  
Reg. No. 3,949,134  
Mark: CHINGGIS KHAAN KHAAN  
OF BEERS  
Registrant: Tenggis Co., Ltd.  
Petitioner: APU XK

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

*In the matter of:*

Trademark Registration Number 3,949,134  
For the mark: CHINGGIS KHAAN KHAAN OF BEERS  
Class: 032  
Registered: April 19, 2011

APU XK,

Petitioner,

v.

TENGGIS CO., LTD.

Registrant.

Cancellation No. \_\_\_\_\_

**PETITION TO CANCEL**

APU XK, a joint stock company organized and existing under the laws of Mongolia, located and doing business at APU Building, Chinggis Avenue 14, Khan-Uul District, Ulaanbaatar 17040, Mongolia (hereinafter, "Petitioner"), believes it will be damaged by the continued registration of the mark CHINGGIS KHAAN KHAAN OF BEERS (hereinafter, "Registrant's Mark") displayed in U.S. Trademark Registration Number 3,949,134 (hereinafter, the "Registration") in the name of TENGGIS CO., LTD., a sole proprietorship composed of Enkhbayar Shagdarguntev, a Mongolian citizen, purported to be operating in the State of California having an address of 1117 South Bedford Street, #201, Los Angeles, California

90035, United States of America (hereinafter, “Registrant”), and by and through its attorneys, hereby opposes the same. Petitioner deems itself injured by said Registration and hereby petitions for cancellation thereof. The grounds for cancellation are as follows:

1. Petitioner is the owner of U.S. Trademark Application Serial No. 85/801808 for the mark CHINGGIS KHAN THE ORIGINAL MONGOLIAN VODKA & Design<sup>1</sup> (hereinafter, “Petitioner’s Mark”) in Class 33 for “vodka” (hereinafter, “Petitioner’s Goods”) filed December 13, 2012.

2. On October 15, 2013, the Trademark Office issued an office action against Application Serial No. 85/801808 under Section 2(d) of the Trademark Act, alleging likelihood of confusion with Registrant’s Mark for use on “beer” in Class 32 (hereinafter, “Registrant’s Goods”).

**COUNT 1**  
**FRAUDULENT PROCUREMENT**

3. Upon information and belief, the Registration resulted from an intent-to-use application filed on July 11, 2004.

4. On January 9, 2011, Registrant submitted a Statement of Use to the Trademark Office in which Registrant represented to the Trademark Office that he was using Registrant’s



<sup>1</sup>

Mark in commerce in connection with Registrant's Goods. Registrant made this representation to induce the Trademark Office to issue a Certificate of Registration. A specimen of use was submitted by the Registrant to substantiate the claim of use in commerce, which consisted of a photograph of an alleged beer bottle label displaying the phrase, "CHINGGIS KHAAN™ THE KHAAN OF BEERS." It is noted the mark on the label did not match the applied-for mark.

5. Registrant's Statement of Use alleged use of Registrant's Mark anywhere since July 11, 2004 and use of Registrant's Mark in commerce since July 15, 2004.

6. The Registration was subsequently issued on April 19, 2011 under U.S. Trademark Registration No. 3,949,134.

7. Not having ever seen Registrant's Goods in the marketplace or able to obtain information about Registrant's Goods online or elsewhere, Petitioner commissioned an investigation regarding the alleged use of Registrant's Mark on Registrant's Goods. Based on information specifically obtained from that investigation, the mark CHINGGIS KHAAN KHAAN OF BEERS has never been used by Registrant on Registrant's Goods as identified in U.S. Trademark Registration No. 3,949,134 and as alleged under oath by Registrant in the Statement of Use filed with the Trademark Office on January 9, 2011.

8. Petitioner believes, based on such investigation and upon independent research conducted by Petitioner, that the Statement of Use filed by Registrant was submitted with the intent to commit fraud on the Trademark Office on the basis that Registrant's Mark was not in use on Registrant's Goods on the date of first use claimed therein, namely, July 15, 2004.

9. As of the date of this petition, over nine years after Registrant's alleged first use of Registrant's Goods in commerce, Registrant, in fact, has never offered for sale or sold in commerce beer under Registrant's Mark in commercial quantities or had bona fide use of the Registered Mark in the ordinary course of trade, according to the results of Petitioner's investigation.

10. The representations Registrant made to the Trademark Office in its Statement of Use filed on January 9, 2011 were false.

11. Registrant knew that the representations were false.

12. Registrant knowingly made material misrepresentations to the Trademark Office to procure Registration No. 3,949,134.

13. The Trademark Office relied on Registrant's representations in issuing Registration No. 3,949,134.

14. The Trademark Office would not have issued Registration No. 3,949,134 but for Registrant's false representations regarding use of Registrant's Mark.

15. As an alleged producer of alcoholic beverages in the United States, Registrant is required to obtain approval of its proposed label by the Alcohol and Tobacco Tax and Trade Bureau ("TTB") before selling beer in the U.S. On information and belief, the TTB has no record of a permit approving Registrant's label -- the same label submitted to the Trademark Office as evidence of its use alleged since July 15, 2004.

16. Respondent's actions in the procurement of Registration No. 3,949,134 constitute fraud, thereby invalidating Registration No. 3,949,134. Accordingly, Registration No. 3,949,134 should be canceled in its entirety.

**COUNT II**  
**ABANDONMENT**

17. Petitioner incorporates by reference the allegations contained in paragraphs 1-17.

18. Registrant has not used Registrant's Mark in commerce in connection with Registrant's Goods.

19. On information and belief, if Registrant had ever used Registrant's Mark, its use has since been discontinued with intent not to resume such use.

20. Upon information and belief, Registrant has ceased using Registrant's Mark in connection with Registrant's Goods for three or more years, without intent to resume such use.

21. In light of Registrant's abandonment of trademark rights in Registrant's Mark, Registration No. 3,949,134 should be canceled in its entirety.

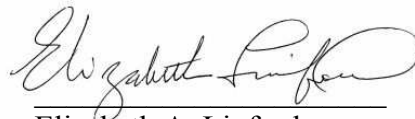
22. Petitioner will be damaged and prejudiced by continuance of the Registration with respect to Registrant's Goods because Petitioner will be unable to register Petitioner's Mark for use on Petitioner's Goods and thus will be denied the benefits afforded by federal registration of Petitioner's Mark.

Petition to Cancel  
Reg. No. 3,949,134  
Mark: CHINGGIS KHAAN KHAAN  
OF BEERS  
Registrant: Tenggis Co., Ltd.  
Petitioner: APU XK

WHEREFORE, Petitioner requests that this Petition to Cancel be granted and Trademark Registration No. 3,949,134 be cancelled in its entirety.

Respectfully submitted,

Date: November 22, 2013



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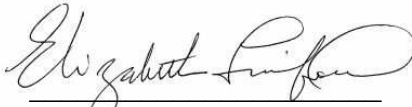


Petition to Cancel  
Reg. No. 3,949,134  
Mark: CHINGGIS KHAAN KHAAN  
OF BEERS  
Registrant: Tenggis Co., Ltd.  
Petitioner: APU XK

**CERTIFICATE OF TRANSMISSION**

I hereby certify that this correspondence is being electronically transmitted to the United States Patent and Trademark Office via ESSTA (*Electronic System for Trademark Trials and Appeals*) on the date identified below.

Date: November 22, 2013

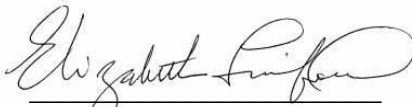
  
Elizabeth A. Linford

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **PETITION TO CANCEL** has been served on Registrant on this 22nd day of November 2013 via First Class Mail, postage prepaid, to:

Enkhbayar Shagdarguntev  
Tenggis Co., Ltd.  
1117 South Bedford Street, #201  
Los Angeles, CA 90035

Date: November 22, 2013

  
Elizabeth A. Linford