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

Proceeding	92059264
Party	Plaintiff Nebraska Brewing Co.
Correspondence Address	JOHN C MILES CLINE WILLIAMS WRIGHT JOHNSON & OLDFATHER LLP 1900 US BANK BUILDING, 233 SOUTH 13TH STREET SUITE 1900 LINCOLN, NE 68508-2095 UNITED STATES trademark@clinewilliams.com
Submission	Withdrawal of Petition to Cancel
Filer's Name	John C. Miles
Filer's e-mail	trademark@clinewilliams.com
Signature	/s/ John C. Miles
Date	06/02/2016
Attachments	Amended Withdrawal of Petition to Cancel 2016-06-02.pdf(190604 bytes )

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

In the Matter of Registration No. 4,200,096  
For the mark BETTY BLACK LAGER  
Registered on August 28, 2012

**NEBRASKA BREWING CO., a Nebraska  
corporation,  
Petitioner,**

**v.**

**EMERALD CITY BEER COMPANY,  
LLC, a Washington liability company,  
Registrant.**

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**Cancellation No. 92059264**

**AMENDED STIPULATED WITHDRAWAL OF PETITION**

COMES NOW Petitioner Nebraska Brewing Co., and hereby withdraws its petition for cancellation of Registrant Emerald City Brewing Company's Registration No. 4200096 pursuant to the attached settlement agreement. Through its undersigned counsel, Registrant expressly consents to withdrawal of the petition.

Dated: June 2, 2016

By: /s/ John C. Miles  
John C. Miles NE Bar # 18131  
Andre R. Barry NE Bar #22505  
CLINE WILLIAMS  
WRIGHT JOHNSON & OLDFATHER, L.L.P.  
1900 U.S. Bank Building  
233 South 13th Street  
Lincoln, Nebraska 68508-2095  
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Attorneys for Petitioner,  
Nebraska Brewing Co.

By: /s/ Robert J. Keating  
Robert J. Keating  
Bar No. 40350  
Keating & Lyden, LLC  
4450 Arapahoe Avenue, Suite 100  
Boulder, CO 80303  
(303) 448-8801

Attorney for Registrant  
Emerald City Beer Company, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Motion for Summary Judgment has been served on Emerald City Beer Company, LLC by email and by mailing said copy on June 2, 2016, via First Class Mail, postage prepaid to:

Robert J. Keating  
Keating & Lyden LLC  
4450 Arapahoe Avenue, Suite 100  
Boulder, CO 80303

/s/ John C. Miles  
John C. Miles

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**TRADEMARK ASSIGNMENT AGREEMENT**

BETTY BLACK

**THIS ASSIGNMENT AGREEMENT** ("Assignment"), made and effective as of the last date of signature (the "Effective Date"), by and between Emerald City Beer Co., LLC ("Emerald City"), and Nebraska Brewing Company, ("Nebraska Brewing") (collectively, "the Parties").

**WHEREAS**, Emerald City is the owner of U.S. Trademark Registration No. 4,200,096 for BETTY BLACK LAGER, in standard characters, for beer;

**WHEREAS**, Nebraska Brewing heretofore has used the trademarks BLACK BETTY IMPERIAL STOUT and BLACK BETTY RUSSIAN IMPERIAL STOUT for beer;

**WHEREAS**, on or about April 16, 2014, Emerald City sent Nebraska Brewing, through its counsel, a letter in which Emerald City asserted that it was the owner of U.S. Registration No. 4,200,096, that Nebraska Brewing's use of its BLACK BETTY RUSSIAN IMPERIAL STOUT was confusingly similar to the mark shown on U.S. Registration No. 4,200,096 and infringed Emerald City's rights in the registered mark, and demanded that Nebraska Brewing cease and desist any and all use of the term BLACK BETTY.

**WHEREAS**, Nebraska Brewing subsequently filed a Petition to cancel Emerald City's U.S. Registration No. 4,200,096;

**WHEREAS**, the Trademark Trial and Appeal Board of the U.S. Patent and Trademark Office (TTAB) subsequently found that Nebraska Brewing has prior rights in the mark BLACK BETTY IMPERIAL STOUT for beer, and that Emerald City's continued use of the mark BETTY BLACK is likely to cause confusion between the two marks;

**WHEREAS**, TTAB struck all of Emerald City's affirmative defenses except for its affirmative defense of laches, but has not yet ruled on the validity of Emerald City's laches defense;

**WHEREAS**, the Parties have reached an agreement to resolve all disputes between them related to the marks discussed above, without further proceedings in TTAB;

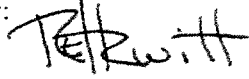

NOW THEREFORE, for and in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

- 1) **Grant**. Emerald City agrees to and does hereby assign and transfer to Nebraska Brewing all of its right, title, and interest in and to the mark BETTY BLACK as a trademark in connection with beer, including but not limited to Registration No. 4,200,096, and any and all common law rights Emerald City has in the mark BETTY BLACK.

- 2) **Termination of Litigation.** Within 10 days after the execution of this Agreement, Nebraska Brewing will pay Emerald City \$1,500 and will withdraw its Petition to cancel U.S. Registration No. 4,200,096.
- 3) **Option to Take License Back.** Nebraska Brewing hereby grants Emerald City an option to take a license to use the mark BETTY BLACK as a trademark in connection with beer, exercisable within one year of the date of this Assignment. In order to exercise this option, Emerald City must demonstrate that it is actually prepared to begin sale of beer using the BETTY BLACK mark, and the license will expire if it does not actually do so. Any license entered into pursuant to this paragraph will be royalty-free and exclusive to Emerald City and will be geographically limited to areas where Nebraska Brewing does not sell its own beer using its marks. Neither this option nor the license contemplated herein shall be assignable by Emerald City.
- 4) **No Joint Venture.** This Assignment creates no agency relationship between the parties hereto, and nothing herein contained shall be construed to place the parties in the relationship of partners or joint venturers, and neither party shall have power to obligate or bind the other in any manner whatsoever.
- 5) **Severability.** If any term, provision, covenant or restriction of this Assignment is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Assignment shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Assignment so as to effect the original intent of the parties as closely as possible in an acceptable manner so that the transactions contemplated hereby may be consummated as originally contemplated to the fullest extent possible.
- 6) **Integration.** This Assignment comprises the entire understanding of the parties hereto on the subject matter herein contained, and supersedes and merges all prior and contemporaneous agreements, understandings and discussions between the parties relating to the subject matter of this Assignment. Any modification of this Assignment shall be by a written instrument signed by the parties hereto.
- 7) **Governing Law and Choice of Forum.** This Assignment shall be governed by and construed according to the laws of the State of Nebraska without regard to conflict of laws principles. Any disputes regarding this Assignment shall be litigated exclusively in state or federal courts in Nebraska.
- 8) **Authority.** The parties respectively represent and warrant that they are under no legal impediment which would prevent their signing this Assignment or consummating the same. The individual signing this Assignment on behalf of the parties represents and warrants that they are authorized and have the power to bind the parties.

By their execution below, the parties hereto have agreed to all of the terms and conditions of this Assignment.

By their execution below, the parties hereto have agreed to all of the terms and conditions of this Assignment.

Emerald City Beer Company, LLC	Nebraska Brewing Company
By: 	By: 
Name: Richard E. Hewitt	Name: Paul H. Karulak
Title: Managing Member	Title: President
Date: 5-5-16	Date: 5/24/16

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