

ESTTA Tracking number: **ESTTA691698**

Filing date: **08/25/2015**

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	Huitrerie, LLC		
Entity	Limited liability company	Citizenship	Washington
Address	4743 Ballard Avenue NW Seattle, WA 98107 UNITED STATES		

Correspondence information	Zachary Wright Wright Law PLLC 601 Union Street, Suite 4200 Seattle, WA 98101 UNITED STATES zwright@wright.pro,tm@wright.pro Phone:2069713350		
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Registration Subject to Cancellation

Registration No	4327632	Registration date	04/30/2013
Registrant	Walrus and Carpenter Oysters, LLC Unit 3 Providence, RI 02906 UNITED STATES		

Goods/Services Subject to Cancellation

Class 031. First Use: 2010/10/00 First Use In Commerce: 2010/10/00 All goods and services in the class are cancelled, namely: Live oysters

Grounds for Cancellation

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	86443962	Application Date	11/04/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	THE WALRUS AND THE CARPENTER		

Design Mark	<p style="text-align: center;">THE WALRUS AND THE CARPENTER</p>
Description of Mark	NONE
Goods/Services	Class 043. First use: First Use: 2010/08/06 First Use In Commerce: 2010/08/06 Restaurant Services

Attachments	86443962#TMSN.png(bytes) PETITION for Cancellation - Huitrerie v W&C Oysters .pdf(431756 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	/Zachary A Wright/
Name	Zachary Wright
Date	08/25/2015

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

In the matter of:

Mark : WALRUS AND CARPENTER OYSTERS
Registration No. : 4327632
Registration Date : April 30, 2013

Huitrerie, LLC,)	
)	
Petitioner,)	Cancellation No. _____
)	
v.)	
)	
Walrus and Carpenter Oysters, LLC,)	
)	
Registrant.)	
)	
)	

Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

PETITION FOR CANCELLATION

Huitrerie, LLC, a Washington limited liability company ("Petitioner"), located at 4743 Ballard Ave NW, Seattle, Washington 98107, believes it would be damaged by continued registration of the WALRUS AND CARPENTER OYSTERS, Reg. No. 4327632 (the "Registration"), owned by Walrus and Carpenter Oysters, LLC ("Registrant"), and hereby petitions for cancellation of the same.

GROUND FOR CANCELLATION

1. Petitioner is and has been engaged in the sale and marketing of restaurant services in the United States under the trademark THE WALRUS AND THE CARPENTER since at least as early as March 2010.

2. Petitioner has maintained a website marketing its services since at least as early as May 2010.

3. Petitioner has sold goods and services under this trademark continuously, and used it continuously in commerce, since at least as early as August 9, 2010.

4. Petitioner is also the owner of the following United States trademark application, current status and current title information for which are attached as Exhibit A (the "Application"):

THE WALRUS AND THE CARPENTER Application No. 86443962

5. Petitioner has used its marks in commerce extensively and has acquired a considerable and valuable goodwill and recognition for them. The public and the wholesale trade have come to associate the THE WALRUS AND THE CARPENTER mark with Petitioner and Petitioner's goods and services.

6. In particular, Petitioner has received significant national media coverage for its restaurant services, since it opened but also some prior to its opening. Some of these include a front page article in the New York Times, as well as articles in Bon Appétit magazine, USA Today, and Food and Wine magazine.

7. Registrant is the owner of the Registration. The Registration covers the trademark WALRUS AND CARPENTER OYSTERS for the goods "live oysters" only. It does not cover "restaurant services" or similar. Its application for the Registration was filed on August 21, 2012 and it was registered on April 30, 2013.

8. The examining attorney for Petitioner's Application has alleged that Petitioner's trademark is confusingly similar to Registrant's trademark and is likely, when applied to the goods and services of the Petitioner, to cause confusion or to cause mistake or to deceive.

9. While not identical, Registrant's mark incorporates three of the same words as Petitioner's trademark, including both of the distinctive words "Walrus" and "Carpenter".

10. The examining attorney for Petitioner's Application has alleged that the services provided under Petitioner's mark and the goods provided under Registrant's mark are "related," making confusion between the marks are likely.

11. The examining attorney for Petitioner's application has asserted that "[u]pon encountering similar marks and closely related goods and services, consumers would mistakenly believe that applicant's services and registrant's goods emanate from a common source, and thus a likelihood of confusion as to source would result." Office Action re: Application Serial No. 86443962, dated February 25, 2015.

12. Petitioner is and has been engaged in the sale and marketing of its restaurant services since long before August 17, 2012, the filing date of Registrant's trademark application.

13. In particular, Petitioner was nationally known through various media coverage prior to the filing date of Registrant's application for the Registration.

14. Petitioner has used its trademark, and used it in commerce, prior to any of date on which Registrant can rely in this proceeding regarding its trademark.

15. To the extent that the overall commercial impression of Petitioner's longstanding and nationally-known mark is likely to cause confusion, mistake or deception with respect to the trademark covered by the Registration, as asserted by the examining attorney for the Application, such confusion, mistake or deception may cause harm to Petitioner's reputation for superior quality and service which it has developed over its years of operation.

16. Based on the foregoing, to the extent there is a likelihood of confusion between these marks, Petitioner would be greatly damaged by the continued registration of the WALRUS AND CARPENTER OYSTERS mark to Registrant.

RELIEF REQUESTED

A. By reason of the foregoing, the above-identified trademark registration, Reg. No. 4422610, must be cancelled in accordance with Section 2(d) and 2(a) of the Trademark Act of 1946, 15 U.S.C. § 1052(d), on the grounds that Registrant's mark is highly similar to Petitioner's trademark and is likely to cause confusion, mistake and deception and falsely suggests a connection to Petitioner.

B. Petitioner respectfully requests that this petition for cancellation be granted, and that the above-identified registration be cancelled.

Dated: August 25, 2015.

Respectfully submitted,

WRIGHT LAW PLLC

Zachary A Wright

Zachary A. Wright
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Counsel for Petitioner
HUITRERIE, LLC

CERTIFICATE OF SERVICE

I, Zachary A. Wright, hereby certify that a true and complete copy of the foregoing Petition for Cancellation has been served on Registrant by mailing said copy, via first class mail, postage prepaid, to counsel for Registrant as listed in TSDR as follows:

Tyler T. Ray
Cooper Cargill Chant, P.A.
2935 White Mountain Highway
North Conway, NH 03860

Dated: August 25, 2015

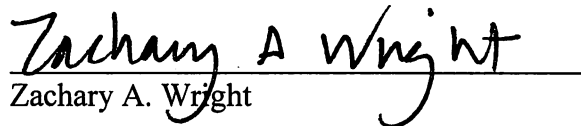

Zachary A. Wright

EXHIBIT A

Current Status and Title Information for Petitioner's Trademark Application

STATUS

DOCUMENTS

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Mark: THE WALRUS AND THE CARPENTER

THE WALRUS AND THE CARPENTER

US Serial Number: 86443962

Application Filing Date: Nov. 04, 2014

Register: Principal

Mark Type: Service Mark

Status: A non-final Office action has been sent (issued) to the applicant. This is a letter from the examining attorney requiring additional information and/or making an initial refusal. The applicant must respond to this Office action. To view all documents in this file, the Trademark Document Retrieval link at the top of this page.

Status Date: Feb. 25, 2015

▼ Mark Information

[▲ Collapse All](#)

Mark Literal Elements: THE WALRUS AND THE CARPENTER

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

▼ Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *...* identify additional (new) wording in the goods/services

For: Restaurant Services

International Class(es): 043 - Primary Class

U.S Class(es): 100, 101

Class Status: ACTIVE

Basis: 1(a)

First Use: Aug. 06, 2010

Use in Commerce: Aug. 06, 2010

▼ Basis Information (Case Level)

Filed Use: Yes	Currently Use: Yes	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

▼ Current Owner(s) Information

Owner Name: Huitrerie, LLC

Owner Address: PO Box 17433
Seattle, WASHINGTON 98127
UNITED STATES

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: WASHINGTON

▼ **Attorney/Correspondence Information**

Attorney of Record

Attorney Name: Maureen Burke

Correspondent

Correspondent: MAUREEN BURKE
Name/Address: CAIRNCROSS & HEMPELMANN. P.S.
 524 2ND AVE STE 500
 SEATTLE, WASHINGTON 98104-2323
 UNITED STATES

Domestic Representative - Not Found

▼ **Prosecution History**

Date	Description	Proceeding Number
Feb. 25, 2015	NON-FINAL ACTION MAILED	
Feb. 25, 2015	NON-FINAL ACTION WRITTEN	77304
Feb. 24, 2015	ASSIGNED TO EXAMINER	77304
Nov. 14, 2014	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Nov. 07, 2014	NEW APPLICATION ENTERED IN TRAM	

▼ **TM Staff and Location Information**

TM Staff Information

TM Attorney: VERHOSEK, WILLIAM T

Law Office Assigned: LAW OFFICE 114

File Location

Current Location: TMO LAW OFFICE 114 - EXAMINING ATTORNEY
 ASSIGNED

Date in Location: Feb. 25, 2015

▼ **Assignment Abstract Of Title Information - Click to Load**

▼ **Proceedings - Click to Load**