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Filing date: **11/17/2015**

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 | Small World Wine Company, LLC | | |
| Entity | LLC | Citizenship | Oregon |
| Address | P.O. Box 65 Philomath, OR 97370 UNITED STATES | | |

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| Attorney information | Timothy F. Myers Law Firm of Timothy Myers 30862 Peterson Rd Philomath, OR 97370 UNITED STATES pat-insights@outlook.com Phone:541 760 3701 | | |
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Registration Subject to Cancellation

| | | | |
|-----------------|--|-------------------|------------|
| Registration No | 4132344 | Registration date | 04/24/2012 |
| Registrant | SPINDRIFT BEVERAGE CO., LLC 72A HIGH STREET CHARLESTOWN, MA 02129 UNITED STATES | | |

Goods/Services Subject to Cancellation

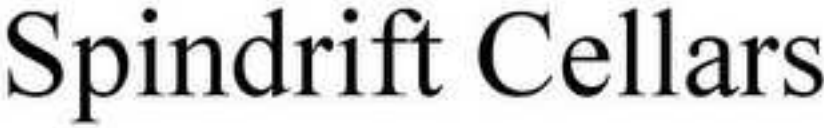
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| Class 032. First Use: 2011/07/00 First Use In Commerce: 2011/07/00 All goods and services in the class are cancelled, namely: Soft drinks and carbonated soft drinks, enhanced with fresh fruit juice, vitamins, minerals, nutrients, amino acids, herbs, aerated water, soda water and seltzer water |
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Grounds for Cancellation

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| False suggestion of a connection | Trademark Act section 2(a) |
| <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 |
| Priority and likelihood of confusion | Trademark Act section 2(d) |
| Other | No Bona Fide Intent to use Mark, 15 U.S.C. 1051(b), Contract Law |

Mark Cited by Petitioner as Basis for Cancellation

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|-----------------------|------------|------------------|------------|
| U.S. Registration No. | 3437959 | Application Date | 12/22/2005 |
| Registration Date | 05/27/2008 | Foreign Priority | NONE |

| | | | |
|---------------------|---|------|--|
| | | Date | |
| Word Mark | SPINDRIFT CELLARS | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 033. First use: First Use: 2006/04/15 First Use In Commerce: 2006/04/15 Alcoholic beverages of fruit | | |

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|-------------|--|
| Attachments | 78779006#TMSN.png(bytes) Pleading for Cancellation of Spindrift Soda_printed_signed.pdf(1047059 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 USPS Express Mail Post Office to Addressee on this date.

| | |
|-----------|-------------------------------------|
| Signature | /Timothy F. Myers, Reg. No. 42,919/ |
| Name | Timothy F. Myers |
| Date | 11/17/2015 |

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

SMALL WORLD WINE COMPANY, LLC

Petitioner,

v.

SPINDRIFT BEVERAGE CO., LLC

Registrant.

Cancellation No. _____

MARK: SPINDRIFT SODA

Registration No. 4,132,344

Registered: April 24, 2012

PETITION TO CANCEL

Small World Wine Company, LLC (herein after “Small World” or “Petitioner”), an Oregon Limited Liability Company, having a principal place of business at 810 Applegate St., Philomath, OR, 97370, and a mailing address of PO Box 65, Philomath, OR 97370, believes it is damaged by and will continue to be damaged by registration of the mark shown in U.S. Registration No. 4,132,344 (the “Registration”) believed owned by Spindrifft Beverage Co., LLC (herein after “SBC” or “Registrant”), a Limited Liability Company in Massachusetts, believed having a current principal place of business at 260 Charles St., Waltham, MA 02453 and hereby petitions to cancel the same pursuant to the provisions of 15 U.S.C. §1064.

The Grounds for Cancellation are as follows

1. Small World is a producer of fine wines under the SPINDRIFT CELLARS® trademark label made from a variety of grapes. Small World wines is known for its “Strikingly Original” wines and has won over 50 commercial wine-show and wine-trade awards. These awards include Best of Show, several gold medals, ratings of 90 and above, and including multiple selections as Editor’s Choice, Best Buy, and Top 100 Wines of the World by wine rating magazines as well as an exclusive invite to the internationally recognized International Pinot Noir Celebration.
2. Since at least April of 2006, Small World has used its distinctive SPINDRIFT CELLARS mark in connection with wine related activities and sales in commerce in the international class 033, G&S: Alcoholic beverages of fruit.
3. Over the past 9 years, Small World has provided wine sales, and services such as wine club activities, wine events, and event hosting in a variety of locations within the United States and has developed an outstanding reputation in the industry.
4. Since introducing the “Spindrift Cellars”® wine brand in 2006, Small World’s shipments have grown more than 50% faster than the overall wine industry in the last eight years. Due to recent expansion of winery production facilities Small World has increased its wine sales by about 55% in the first quarter of 2015. Small World has expanded its distribution sales in at least 10 new states and has begun foreign distribution. Wine club membership has quadrupled with members from several states.
5. In addition to its longstanding common law trademark rights in SPINDRIFT CELLARS and related marks and trade dress, Small World owns the following federal registration for the

SPINDRIFT CELLARS mark in connection with the goods and services of alcoholic beverages of fruit.

| <u>Mark</u> | <u>Reg. No.</u> | <u>Goods and Services</u> |
|-------------------|-----------------|-------------------------------|
| SPINDRIFT CELLARS | 3,437,959 | Alcoholic beverages of fruit. |

This registration, duly and legally issued by the U.S. Patent and Trademark Office, is valid, subsisting, and incontestable pursuant to 15 U.S.C. §1065. Small World uses the notice of registration, “®,” with its SPINDRIFT CELLARS mark pursuant to 15 U.S.C. §1111.

Attached hereto as Exhibit I is a true and correct copy of the registration certificate for the above-identified trademark registration along with printouts from the U.S. Patent and Trademark Office's Trademark Electronic Search System database showing the current status and ownership of the trademark registration.

6. Small World has expended significant amounts of time, money, and effort in the development and promotion of its SPINDRIFT CELLARS registered mark.
7. As a result of Small World’s longstanding use and promotion of SPINDRIFT CELLARS wines and services, the SPINDRIFT CELLARS mark is both nationally and internationally known.
8. Notwithstanding SPINDRIFT CELLARS prior rights in the SPINDRIFT CELLARS name and mark, Registrant Spindrif Soda, LLC (then assigned to Spindrif Beverage Company, LLC, (hereafter "SBC" or Registrant)) registered SPINDRIFT SODA as a goods and service mark in international class 032 for "Soft drinks and carbonated soft drinks, enhanced with

fresh fruit juice, vitamins, minerals, nutrients, amino acids, herbs, aerated water, soda water and seltzer water” (the “Registration”).

9. Upon information and belief, title to the trademark SPINDRIFT SODA may have been transferred by operation of law but such title is not officially registered to Spindrift Beverage Co., Inc, believed to be the true party of interest, when Spindrift Beverage, LLC, the actual assignee of record, incorporated or reincorporated in Delaware.
10. Neither SBC nor Spindrift Beverage Co., Inc. have a trademark registered with the USPTO that has only the principal SPINDRIFT portion of SPINDRIFT SODA mark for international class 032.
11. In the Registration, SBC claims to have first used the SPINDRIFT SODA mark in connection with soft drinks and carbonated soft drinks, enhanced with fresh fruit juice, vitamins, minerals, nutrients, amino acids, herbs, aerated water, soda water, and seltzer water in July, 2011.
12. Small World began using its SPINDRIFT CELLARS mark in connection with various alcoholic beverages of fruit at least as early as April 15, 2006, approximately 4 years before SBC filed its application on Feb. 23, 2010 which is approximately 5 years before SBC’s claimed date of first use of the SPINDRIFT SODA mark.
13. Small World’s common law, statutory, and priority dates for the SPINDRIFT CELLARS mark precede SBC’s filing date for SPINDRIFT SODA mark and the claimed date for first use and, upon information and belief, any priority date which SBC may rely.
14. The SPINDRIFT CELLARS trademark is distinctive.

15. Prior to filing its application to register the SPINDRIFT SODA mark, SBC had constructive knowledge of the SPINDRIFT CELLARS mark given Small World's federal registration set forth above.
16. Prior to the registration of the SPINDRIFT SODA mark, SBC had actual knowledge of the SPINDRIFT CELLARS mark as the Examiner first rejected the SPINDRIFT SODA mark based on the SPINDRIFT CELLARS mark.
17. The goods and services identified in the Registration, namely soft drinks and carbonated soft drinks, enhanced with fresh fruit juice, vitamins, minerals, nutrients, amino acids, herbs, aerated water, soda water, and seltzer water, are highly similar to the alcoholic beverages of fruit goods and services offered by Small World.
18. Small World at times sells and co-markets local craft-beer products.
19. Upon information and belief, SBC markets and labels the soft drinks and carbonated soft drinks to prospective purchasers of alcoholic beverages of fruit using just the principal SPINDRIFT portion as the mark on the products and not the actually registered SPINDRIFT SODA trademark.
20. Upon information and belief, SBC markets and labels the soft drinks and carbonated soft drinks to prospective purchasers of alcoholic beverages of fruit using the mark SPINDRIFT® which is a misuse of the registration symbol as SBC has not registered "SPINDRIFT" but rather has only registered SPINDRIFT SODA.
21. Upon information and belief, SBC markets the soft drinks and carbonated soft drinks labeled with the principal SPINDRIFT portion to prospective purchasers of alcoholic beverages of fruit particularly as mixers and auxiliary side drinks.

22. Upon information and belief, SBC markets and labels one of its products as “Ginger Beer” which is known to consumers and third parties in the beverage industry to be marketed both as a non-alcoholic mixer for hard liquor and also by third parties as an alcoholic beverage as a type of beer. Further, the deliberate intentional use of the words “Ginger Beer” for one of its products rather than the traditional “Ginger Ale” of the soda market is to take advantage of the craft beer and cocktail markets. Having an actual beer mug within the SPINDRIFT logo trade dress only confuses the consumer further.
23. On information and belief SBC has and intends to suggest “Ginger Beer” use with cocktails as a marketing effort with the phrase ‘Spindrift Moscow Mule’.
24. Upon information and belief, SBC markets or is preparing to market its mixer products, including “Ginger Beer” products, in establishments, such as liquor stores, wine shops, wine events, that market to prospective purchasers of alcoholic beverages of fruit.
25. Upon information and belief, the Registrant’s goods and the Petitioner’s goods are related because they may be used together to make drinks and consumed together in spritzers which are made from wine and soda water.
26. Upon information and belief, the Registrant’s goods and the Petitioner’s goods may be marketed and sold together at retail wine and beverage shops as alcoholic beverages containing fruit and soda are marketed and sold together in the same channels of trade.
27. Neither the Registrant’s application nor the Petitioner’s registration contained any limitations regarding trade channels for the goods and therefore it is assumed that Registrant’s and Petitioner’s goods are sold everywhere that is normal for such items, i.e., wine and beverage shops as well as natural and organic grocery stores. Accordingly, it is

assumed that the same classes of purchasers shop for these items and that consumers are accustomed to seeing them sold under the same or similar marks.

28. This Petition for Cancellation is being filed within five years from the date of the registration of the SPINDRIFT SODA mark.

29. A consent agreement is contained within the file history of the Registration and is incorporated by reference herein.

30. Petitioner Small World signed the consent agreement with Registrant SBC on August 19, 2010 to consent to the use and registration of the trademark “SPINDRIFT SODA” for the following goods: “Soft drinks and carbonated soft drinks, enhanced with fresh fruit juice, vitamins, minerals, nutrients, amino acids and/or herbs, aerated water, soda water and seltzer water”, provided (1) Registrant’s products remain non-alcoholic beverages and never migrate into Petitioner’s competitive marketplace as “wine coolers” or any other type of alcoholic beverages; and (2) Registrant’s labels and other marketing and branding remain distinctive from Petitioner’s labels and other marketing and branding. *In the event Registrant’s marketing efforts or label designs communicate, express, or imply in any way that Registrant’s products or business is associated with Petitioner’s then permission will immediately be retracted* (emphasis added).

31. Upon information and belief, while at the time of the signing of the consent agreement there had not been instances of confusion, as a result of Registrant’s misuse of the SPINDRIFT SODA mark in leaving off the SODA portion, SBC’s marketing efforts, and SBC’s selling only the principal SPINDRIFT labeled products in the commercial channels of the Petitioner,

there has been actual and the potential for continuing likelihood of confusion as to the source of SBC products and Small World products.

32. Petitioner's mark so resembles Registrant's mark, that when applied to the goods and/or services of the Petitioner, have caused and will continue to likely cause confusion, such that the Registrant's registration should be cancelled because Petitioner has priority of use.

**First Ground for Cancellation
Other
(Contract Law)**

33. Petitioner re-alleges and incorporates herein by reference the matters alleged in Paragraphs 1 through 32 of the pleading.
34. The consent agreement filed with the Registration is a valid agreement and the parties contemplated that there could be future confusion as the agreement sets out in part that “[Petitioner] hereby consents to the use and registration of the trademark ‘SPINDRIFT SODA, Serial No. 77942229’ “In the event [Registrant’s] marketing efforts or label designs communicate, express, or imply in any way that Applicant’s (Registrant’s) products or business is associated with Registrant’s (Petitioner’s) then permission will immediately be retracted.” . . . “[T]he parties agree to continue to cooperate in taking reasonable action to avoid confusion and to correct any instances or likelihood of confusion which comes to their attention.”
35. The consent agreement had no monetary consideration other than de minimis re-imburement for attorney fees but had valid consideration in the mutual obligations of the parties.
36. On information and belief, Small World has had several people stop into their tasting room and ask if Small World is now in the juice business. This distractive discussion is a

demonstration of confusion and takes away from Small World's conversation with customers about their wine products. Accordingly, Small World is deprived of the ability to control the customer perception of its product quality as the time with the customer to sample wines is limited.

37. On information and belief, Small World has also had numerous social media inquiries asking about whether Small World is in the juice business further demonstrating confusion.
38. Trends in the beverage industry are creating cross-over products where so called "sodas" are becoming fermented alcoholic beverages like "Not Your Father's Root Beer" which is actually an alcoholic Ale demonstrating a likelihood of confusion.
39. Registrants and Petitioner's geographic markets are expanding into common multiple states demonstrating an increasing likelihood of confusion.
40. For approximately six months prior to the filing of this petition to cancel, Small World has attempted to resolve this dispute with SBC after it became clear that SBC was blatantly marketing directly in Small World's local market in the Pacific Northwest and specifically at Oregon State University (OSU) and was about to introduce a "GINGER BEER" product and market it along with its products in the traditional liquor related markets.
41. Starting in 2015 Small World's SPINDRIFT CELLARS® wines became the exclusive winery sponsor of Corvallis Knights Baseball which is played at OSU baseball stadium. SPINDRIFT CELLAR trademarked wines may be purchased during the Knights Games. Accordingly, SPINDRIFT CELLARS is well known in the Corvallis Area where OSU is located as both reside in Benton County, Oregon.

42. Spindrift Cellars has been producing wines from OSU's Woodhall Vineyard starting in 2006. This relationship became exclusive starting in 2012 and Small World is the only winery in Oregon being sold this fruit from OSU for commercial production. OSU Woodhall Vineyard wines are bottled under the SPINDRIFT CELLARS label and then used by local caterers like OSU Catering for OSU Events.
43. The Petitioner has performed its obligations of notifying the Registrant of instances and likelihood of confusion and has offered reasonable actions the Registrant could take to avoid confusion. For instance, Small World has communicated instances of confusion to SBC and provided several reasonable courses of action to avoid or correct the confusion. SBC had assured Small World it would stop use of the "Spindrift" only portion of the mark and would begin a new re-branding campaign. SBC, however, recently informed Small World that it intends to continue to use only the principal SPINDRIFT portion of the SPINDRIFT SODA mark and the principal SPINDRIFT portion with other terms without the SODA portion of the mark, thus exhausting Small World's patience.
44. Upon information and belief, SBC has refused to correct any labeling and marketing nor change any commercial channels. Despite Small World's numerous attempts to resolve the dispute without administrative or judicial intervention, SBC has refused to take this matter seriously and engage in substantive dialog with Small World to reduce or eliminate the confusion and rather only wants discussion on how to allow for more expansive use of the principal term SPINDRIFT that would only increase confusion.
45. Petitioner on July 28, 2015 notified Registrant that as there appeared to be no common ground towards an agreement to prevent and reduce the actual and likelihood of continuing confusion, and based on the strong and on-going potential for confusion, Petitioner

demanded that Spindrift Beverage Company, Inc. and its affiliated companies, divisions, suppliers, and distributors immediately cease and desist all use of SPINDRIFT without the use of SPINDRIFT SODA to differentiate as agreed in the consent agreement. Registrant was further notified that it must take immediate reasonable action to prevent further confusion by, at least but not limited to:

- Stopping all use of “Spindrift” other than for “Spindrift Soda” as registered, including but not limited to “Spindrift” (alone), “Spindrift Beverage”, “Spindrift Fresh”, “Spindrift California”, “Spindrift Ginger Beer”, and “Spindrift Seltzer”;
- Stop selling and marketing of all products labeled with “Spindrift” without the use of “Spindrift Soda” prominently displayed;
- Stop selling and marketing of all products labeled with “Spindrift” including “Spindrift Soda” at alcohol related markets, including liquor stores and wine related forums and events where dilution and confusion are possible;
- Changing labels and marketing (including logos, web pages, advertising, etc.) to clearly differentiate from Spindrift Cellars trademark, including its common law trademarks and trade dress; and
- Make clear in advertising, web pages, marketing material, product labels, and other communication media that include the term “Spindrift” that “Spindrift Soda” and other “Spindrift” labeled products and businesses are not affiliated with Spindrift Cellars.

46. Small World has performed all its obligations under the consent agreement.

47. As of this pleading, SBC has utterly failed to take any of the above actions to reduce or prevent confusion as agreed to in the consent agreement as their obligation. Accordingly, SBC is in breach of contract and the consent agreement no longer believed to be in force.
48. Even if the contract remains in force, the consent agreement expressly states, “In the event [Registrant’s] marketing efforts or label designs communicate, express, or imply in any way that [Registrant’s] products or business is associated with [Petitioner’s] then permission will immediately be retracted.” Either under breach of contract or enforcement of its terms, the permission granted in the consent agreement is cancelled.
49. Petitioner Small World has suffered and continues to suffer damage to its reputation, goodwill, and diminution of its SPINDRIFT CELLARS trademark caused by Registrant’s non-use and mis-use of the SPINDRIFT SODA registered trademark and entry into the markets of Petitioner.
50. Consequently, SBC’s SPINDRIFT SODA mark which relied on the consent agreement for allowance, should now be accordingly cancelled as the permission has been retracted either by breach of contract or enforcement of the contract terms.

Second Ground for Cancellation
No Bona Fide Intent to use Mark
(15 U.S.C. §1051(b))

51. Petitioner re-alleges and incorporates herein by reference the matters alleged in Paragraphs 1 through 50 of the pleading.
52. In the Registration, the filing basis was Section 1(b), intent to use, and the Registrant stated, “The applicant has a bona fide intention to use or use through the applicant's related company

or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application (15 U.S.C. Section 1051(b)).”

53. On information and belief, the registered SPINDRIFT SODA mark was not in bona fide use nor intended to be in bona fide use in commerce on the registered listed goods SBC sold or transported in commerce that was placed in any manner on the registered listed goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or that the nature of the registered listed goods made such placement impracticable.
54. The samples submitted with the Statement of Use in the file record of the Registration are herein incorporated by reference. In the samples submitted for the actual use specimens, there were four web site captures and the specimen description states, “the applicant's home website which provides for the sale of product Spindrifft Soda together with the ecommerce site www.famousfoods.com/spindrifft which sells the product Spindrifft Soda online.”
55. Three (1st, 2nd, and 4th) of the web site captures show the SPINDRIFT portion of the SPINDRIFT SODA mark with the ® symbol prior to the registration of SPINDRIFT SODA actually being granted and further demonstrating that the Registrant only intended to use just the SPINDRIFT portion of the applied mark and not the complete registered trademark.
56. The SPINDRIFT® mark shown on the three web site captures was in fact, not registered and the federal registration symbol was used with a mark that was not actually registered at the USPTO. T.M.E.P. §906 specifically states, “The federal registration symbol may not be used with marks that are not actually registered in the United States Patent and Trademark Office. Even if an application is pending, the registration symbol may not be used until the mark is registered.”

57. Use of the principal term SPINDRIFT as a mark by itself, use of SPINDRIFT SELTZER as a mark, and use of SPINDRIFT a refreshing take on soda as a mark are all material alterations of the SPINDRIFT SODA mark applied for in the Registration.
58. None of the actual products for the goods and services applied for and shown on the 2nd and 3rd web site captures actually use the SPINDRIFT SODA mark on their label in the form as registered in the Registration.
59. The 2nd and 3rd web site captures are of another company's website (www.online.freshfoods.com) and thus only those products shown are actual use of the Registrant's product labeling and not the description and wording of the other company which is mere advertising. The SPINDRIFT SODA examples shown on the 1st and 4th web site captures are for mere advertising and not as use as a trademark. Software that is merely a conduit through which online retail services are rendered is not "in use in commerce" in association with software. *Lens.com Inc. v 1-800 Contacts Inc.*, 686 F.3d 1376, 103 USPQ2d 1672, 1676-77 (Fed. Cir. 2012).
60. Therefore, SBC did not have a bona fide intent to use the registered SPINDRIFT SODA mark in connection with the identified goods/services as of the filing date of the application under 15 U.S.C. §1051(b) and should be cancelled based on 15 U.S.C. §1064(1).

Third Ground for Cancellation
Fraud
(Torres v. Cantine Torresella S.r.l 805 F.2d 46,
1 USPQ2d 1483 (Fed. Cir. 1986))

61. Petitioner re-alleges and incorporates herein by reference the matters alleged in Paragraphs 1 through 60 of the pleading.
62. Upon information and belief, when Registrant in responding to an Office Action from the USPTO with the consent agreement, the Registrant made a false representations to the USPTO that were material to the registerability of the mark, intended to leave out, and failed to bring to the attention of the Examining Attorney for review 1) the consent agreement's specimens which only indicated use of the principal portion SPINDRIFT and 2) the consent agreement clause "In the event Applicant's (Registrant's) marketing efforts or label designs communicate, express, or imply in any way that Applicant's (Registrant's) products or business is associated with Registrant's (Petitioner's) then permission will immediately be retracted."
63. The consent agreement further included a clause "the parties agree to continue to cooperate in taking reasonable action to avoid confusion and to correct any instances or likelihood of confusion which comes to their attention." This clause was submitted by Registrant to the Examining attorney but SBC failed to note that the permission in the consent agreement could be retracted which may have caused the Examiner to continue to deny the Registration.
64. 15 U.S.C. Section 1051(b)(3)(D) requires that the Registrant verify "that, to the best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when

used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive.”

65. Fraud in procuring a trademark registration occurs when an applicant knowingly makes false, material representations of fact in connection with their application. The obligation which the Lanham Act imposes on an applicant is that they will not make knowingly inaccurate or knowingly misleading statements in the verified declaration forming part of the application for registration. *Torres v. Cantine Torresella S.r.l* 805 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986).
66. Further, on information and belief, the registered SPINDRIFT SODA mark was not in bona fide use nor intended to be in bona fide use on products listed for all the good and service classes applied for in the Registration when SBC filed the statement of use. SBC knew or should have known that it did not intend to use the SPINDRIFT SODA trademark and in fact, deliberately changed their corporate name to Spindrif Beverage, marks the aerated water, soda water, and seltzer products from the goods listed in the registration as SPINDRIFT, SPINDRIFT SELTZER, OR SPINDRIFT WATER, created a new website www.spindriffresh.com, and currently still does not deliberately intend to label the products in the registered class with the SPINDRIFT SODA mark but only with the principal SPINDRIFT portion of the mark alone or in combination with other terms besides SODA.
67. Registrant knowingly and willfully used the ® symbol in connection with the principle term SPINDRIFT alone in an attempt to deceive or mislead consumers or others in the trade into believing that the mark was registered.

68. Accordingly, on information and belief, Registrant had knowledge of the falsity of the representation and made the representation with the intent to deceive the USPTO and the public. As such, the SPINDRIFT SODA trademark was obtained fraudulently, and therefore, SBC's mark should be cancelled based on common law and the statutory law cited in *Torres v. Cantine Torresella S.r.l* 805 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986) and under 15 U.S.C. §§ 1052(d) and 1064(3).

**Fourth Ground for Cancellation
Priority and Likelihood of Confusion
(Trademark Act section 2(d))**

69. Petitioner re-alleges and incorporates herein by reference the matters alleged in Paragraphs 1 through 68 of the pleading.

70. The consent agreement filed with Registrant's application included the following condition:

“In the event [Registrant's] marketing efforts or label designs communicate, express, or imply in any way that [Registrant's] products or business is associated with [Petitioner's] then permission will immediately be retracted.”

71. Upon information and belief, SBC's misuse of the registered SPINDRIFT SODA mark by using only the principal SPINDRIFT portion with its trade dress is confusingly similar in appearance to Small World's SPINDRIFT CELLARS mark and trade dress as there is the similar principal term SPINDRIFT appearing in both Petitioner's and Registrant's mark on their respective products and centered under a round shaped spindrifft logo. SBC's non-use of the additional term SODA in its actual registered mark only compounds the confusing similarity.

72. Small World's alcoholic beverages of fruit are offered and sold to prospective purchasers of soft drinks and carbonated soft drinks.

73. Upon information and belief, SBC market the soft drinks and carbonated soft drinks identified in its Registration to the same potential purchasers to whom Small World markets its alcoholic beverage of fruit, namely supermarkets, wine shows, bars, taverns, saloons, lounges, liquor stores, and the like.
74. SBC's mark SPINDRIFT alone and with its trade dress in use is nearly identical to Small World's SPINDRIFT CELLARS trademark and trade dress in that SBC is not using the SODA portion of the Registration in its labeling and advertising materials.
75. Registration of the SBC SPINDRIFT SODA mark has caused further damage to Small World, as it confers upon SBC various statutory presumptions to which it is not entitled in view of Small World's long prior use of the SPINDRIFT CELLARS name and marks.
76. SBC's misuse of the registered mark "SPINDRIFT SODA" by only using the principal term SPINDRIFT and in conjunction with its trade dress in commerce so resembles the "SPINDRIFT CELLARS" name, trade dress and mark as to be likely, when used in connection with the goods and services identified in the Registration, to cause confusion, to cause mistake, and/or to deceive.
77. Consumers are likely to believe, mistakenly, that the goods and services Registrant offers under the SPINDRIFT mark (a misuse of the SPINDRIFT SODA mark), are rendered, sponsored, endorsed, or approved by SPINDRIFT CELLARS, or are in some way affiliated, connected, or associated with Small World, all to the detriment of Small World.
78. Accordingly, Registrant's marketing efforts or label designs have communicated, expressed, and implied that Registrant's products or business are associated with Petitioner's product and thus by Registrant's action the permission in the consent agreement is retracted.

79. Therefore, SBC's mark should be cancelled under 15 U.S.C. §§1052 (d) and 1064.

**Fifth Ground for Cancellation
Abandonment
(Trademark Act section 14(3))**

80. Petitioner re-alleges and incorporates herein by reference the matters alleged in Paragraphs 1 through 79 of the pleading.

81. Upon information and belief, SBC has abandoned the bona fide use of SPINDRIFT SODA mark in not labeling its products in the registered international class 035 for at least three years with said registered mark. 15 U.S.C. 1127 states that a mark shall be deemed to be "abandoned" "When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for three consecutive years shall be prima facie evidence of abandonment. 'Use' of a mark means the bona fide use of such mark made in the ordinary course of trade, and not made merely to reserve a right in a mark."

82. Upon information and belief, SBC never intended to use the SPINDRIFT SODA mark as demonstrated by Spindrifft Soda, LLC changing its corporate name to Spindrifft Beverage Co., LLC on February 3, 2012 which is prior to the April 24, 2012 registration date of the SPINDRIFT SODA mark and not labeling any of its products in the registered international class 035 with SPINDRIFT SODA but rather only with the principal SPINDRIFT portion of the mark without the term SODA that is included in the registered mark.

83. Upon information and belief, SBC is now marketing its products under the mark "Spindrifft Fresh" which is not registered.

84. Upon information and belief, SBC's current website for its products is www.spindrifftfresh.com and began use of this website by at least May 20th, 2012.

85. Upon information and belief, SBC's prior website www.sprindrifftsoda.com redirects users to www.sprindrifffresh.com.
86. Upon information and belief, none of SBC's products listed on its Spindrifft Fresh website, whether it be soda, seltzer, and/or ginger beer, and whether in bottles and/or cans, uses the registered SPINDRIFT SODA mark on its products but rather uses just SPINDRIFT SELTZER, SPINDRIFT WATER, or the principal SPINDRIFT portion with the federal registration mark ® in clear violation of 15 U.S.C. § 1111 and Section 906 of the USPTO T.M.E.P. that states, "the federal registration symbol may not be used with marks that are not actually registered in the USPTO."
87. Registrant knowingly and willfully used the ® symbol in connection with the principal SPINDRIFT portion in an attempt to deceive or mislead consumers or others in the trade into believing that the mark was registered rather than the registered SPINDRIFT SODA mark which it had abandoned.
88. Registrant is further using just the principal term SPINDRIFT with other marks without including the SODA term of the registered SPINDRIFT SODA mark including, but not limited to: SPINDRIFT BEVERAGE, SPINDRIFT SELTZER, SPINDRIFT WATER, SPINDRIFT FRESH, SPINDRIFT MOSCOW MULE, SPINDRIFT CALIFORNIA, and SPINDRIFT CALIFORNIA STYLE.
89. Therefore, SBC's mark should be cancelled under 15 U.S.C. §§ 1127 and 1064(3).

**Sixth Ground for Cancellation
False Suggestion of a Connection
(Trademark Act section 2(a))**

90. Petitioner re-alleges and incorporates herein by reference the matters alleged in Paragraphs 1 through 88 of the pleading.
91. Such willful and deliberate uses of just the principal term SPINDRIFT and not the actually registered SPINDRIFT SODA mark and similar trade dress falsely indicates to consumers that Registrant's products are in some manner connected with, sponsored by, affiliated or associated with, or related to Petitioner or the goods and services of Petitioner.
92. Continued registration of the SBC SPINDRIFT SODA mark would be a further source of damage to Small World, as Small World would be deprived of the ability to control the consumer perception of the quality of the goods and services marketed under the SPINDRIFT CELLARS mark, and places Small World's valuable reputation and goodwill in the hands of others over which Small World has no control.
93. Continued registration of the SBC SPINDRIFT SODA mark as deceptively changed and used by SBC in connection with the sale of its products allows and will continue to allow SBC to receive the tremendous benefit of the substantial goodwill established at great labor and expense by Small World and to gain acceptance of the goods of SBC, not based on the merits of those goods, but on Small World's reputation and goodwill.
94. Therefore, SBC's mark should be cancelled under 15 U.S.C. §§1052 (a) and 1064.

Summary

95. SBC has persisted in using only the SPINDRIFT portion of the mark and has failed to differentiate its products by using its true registered trademark SPINDRIFT SODA, thus refusing to address or correct the confusion. SBC, with its actions, leaves Small World with no choice but to file this Petition to Cancel the SPINDRIFT SODA registration in accordance with statutory and case law and/or as allowed by the consent agreement.

WHEREFORE, pursuant to Section 14 of the Lanham Act, 15 U.S.C. §1064 and the consent agreement, Petitioner Small World respectfully requests that the U.S. Registration No. 4,132,344 be cancelled in its entirety.

Respectfully Submitted,

November 17, 2015



Timothy F. Myers, Reg. No. 42,919, OR Bar

Law Firm of Timothy Myers
30862 Peterson Rd.
Philomath, OR 97370
541 760 3701
541 929 6659 (fax)
Attorney for Small World Wine Company,
LLC.

Exhibit 1
Petitioner's Registration

7557632



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

November 12, 2015

THE ATTACHED U.S. TRADEMARK REGISTRATION 3,437,959 IS CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES PATENT AND TRADEMARK OFFICE.

REGISTERED FOR A TERM OF 10 YEARS FROM *May 27, 2008*

SECTION 8 & 15

SAID RECORDS SHOW TITLE TO BE IN:

Registrant

By Authority of the
Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office


P. SWAIN
Certifying Officer



Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

United States Patent and Trademark Office

Reg. No. 3,437,959

Registered May 27, 2008

TRADEMARK
PRINCIPAL REGISTER

Spindrift Cellars

SMALL WORLD WINE COMPANY (OREGON
CORPORATION)

3700 NW MARSHALL DRIVE

CORVALLIS, OR 973309780

FOR: ALCOHOLIC BEVERAGES OF FRUIT, IN
CLASS 33 (U.S. CLS. 47 AND 49).

FIRST USE 4-15-2006; IN COMMERCE 4-15-2006.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "CELLARS", APART FROM THE
MARK AS SHOWN.

SN 78-779,006, FILED 12-22-2005.

KIMBERLY FRYE, EXAMINING ATTORNEY

Trademark Status & Document Retrieval (TSDR) ?

SEARCH MULTI-SEARCH ?

US Registration No 3437959 Status Documents

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Mark: SPINDRIFT CELLARS

Spindrift Cellars

| | | | |
|-------------------------|--|---------------------------|---------------|
| US Serial Number: | 78779006 | Application Filing Date: | Dec. 22, 2005 |
| US Registration Number: | 3437959 | Registration Date: | May 27, 2008 |
| Register: | Principal | | |
| Mark Type: | Trademark | | |
| Status: | A Sections 8 and 15 combined declaration has been accepted and acknowledged. | | |
| Status Date: | Jun. 15, 2013 | | |
| Publication Date: | Sep. 19, 2006 | Notice of Allowance Date: | Mar. 04, 2008 |

▼ Mark Information Collapse All

Mark Literal Elements: SPINDRIFT CELLARS

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

Disclaimer: "CELLARS"

▼ 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: Alcoholic beverages of fruit

| | | | |
|--------------------------|---------------------|------------------|---------------|
| International Class(es): | 033 - Primary Class | U.S Class(es): | 047, 049 |
| Class Status: | ACTIVE | | |
| Basis: | 1(a) | | |
| First Use: | Apr. 15, 2006 | Use in Commerce: | Apr. 15, 2006 |

▼ Basis Information (Case Level)

| | | | | | |
|-----------------|-----|---------------------|-----|--------------|----|
| Filed Use: | No | Currently Use: | Yes | Amended Use: | No |
| Filed ITU: | Yes | 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: Small World Wine Company

Owner Address: 3700 NW Marshall Drive
Corvallis, OREGON 973309780
UNITED STATES

Legal Entity Type: CORPORATION State or Country Where Organized: OREGON



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Spindrift Cellars

Word Mark **SPINDRIFT CELLARS**

Goods and Services IC 033. US 047 049. G & S: Alcoholic beverages of fruit. FIRST USE: 20060415. FIRST USE IN COMMERCE: 20060415

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 78779006

Filing Date December 22, 2005

Current Basis 1A

Original Filing Basis 1B

Published for Opposition September 19, 2006

Registration Number 3437959

Registration Date May 27, 2008

Owner (REGISTRANT) Small World Wine Company CORPORATION OREGON 3700 NW Marshall Drive Corvallis OREGON 973309780

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CELLARS" APART FROM THE MARK AS SHOWN

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR).

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


| | |
|---|--|
| SMALL WORLD WINE COMPANY, LLC Petitioner, v. SPINDRIFT BEVERAGE CO., LLC. Registrant. | Cancellation No. _____ MARK: SPINDRIFT SODA Registration No. 4,132,344 Registered: April 24, 2012 |
|---|--|

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the PETITION TO CANCEL has been served this 17th day of November, 2015 by Express U.S. Mail, postage prepaid, upon Registrant Spindrift Beverage Co., LLC. at the following believed current principal office address and Agent addresses:

| | | |
|--|---|--|
| Spindrift Beverage Co., LLC and Spindrift Beverage Co., Inc. 260 Charles St. Waltham, MA 02453 | Agent of believed real party of interest Spindrift Beverage, Inc. CT Corporation System 155 Federal St. Suite 700 Boston, MA 02110 | Address of Resident Agent of Assignee of Record Spindrift Beverage, LLC William Creelman 72A High St. Charlestown, MA 02129 |
|--|---|--|

Law Firm of Timothy Myers
 30862 Peterson Rd.
 Philomath, OR 97370



 Timothy F. Myers, Reg. No 42,919, OR Bar