

ESTTA Tracking number: **ESTTA711131**

Filing date: **11/25/2015**

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	Ska Brewing Co.		
Entity	Corporation	Citizenship	Colorado
Address	225 Girard St. Durango, CO 81303 UNITED STATES		

Attorney information	Kathleen S. Ryan The Ollila Law Group LLC 2569 Park Lane, Suite 202 Lafayette, CO 80026 UNITED STATES kryan@olgip.com,trademarks@olgip.com,cmiller@olgip.com,aherbert@olgip.com Phone:303-938-9999		
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**Registration Subject to Cancellation**

Registration No	4832381	Registration date	10/13/2015
Registrant	Lake Bowl Inc. 1165 N Stratford Rd Moses Lake, WA 98837 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 032. First Use: 2013/09/01 First Use In Commerce: 2015/08/23 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)
Priority and likelihood of confusion	Trademark Act section 2(d)

**Mark Cited by Petitioner as Basis for Cancellation**

U.S. Application No.	86570103	Application Date	03/19/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NEFARIOUS TEN PIN		

Design Mark	NEFARIOUS TEN PIN
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 2004/02/23 First Use In Commerce: 2004/02/23 Beer, ale, lager, stout and porter

Attachments	86570103#TMSN.png( bytes ) 22500.023CAN - Petition for Cancellation FINAL.pdf(177715 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	/Kathleen S. Ryan/
Name	Kathleen S. Ryan
Date	11/25/2015

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

**In the Matter of Registration No.  
4,832,381 Issued October 13, 2015**

SKA BREWING CO.	)	
	)	
Petitioner,	)	<b>Cancellation No.</b>
	)	
v.	)	<b><u>PETITION FOR CANCELLATION</u></b>
	)	
LAKE BOWL INC. d/b/a	)	
TEN PIN BREWING CO.	)	
	)	
Respondent.	)	
	)	
	)	

**PETITION FOR CANCELLATION**

Petitioner, Ska Brewing Co. (“Petitioner”), a corporation organized under the laws of Colorado, having a business address of 225 Girard St., Durango, Colorado, 81303, believes that it is and will continue to be damaged by the above-identified registration, and pursuant to 15 U.S.C. § 1064 *et seq.* and 37 C.F.R. § 2.111 *et seq.*, hereby petitions to cancel the same.

As grounds for cancellation, it is alleged that:

1. On August 5, 2013, Lake Bowl Inc. d/b/a Ten Pin Brewing Co. (“Respondent”) filed Application Serial No. 86/028,463 for registration on the Principal Register for “TEN PIN BREWING” for “beer” in International Class 32 (“Respondent’s Mark”). This application matured into Registration No. 4,832,381 on October 13, 2015 and is the subject of this Petition (the “381 Registration”). The goods identified in the ’381 Registration are referred to herein as “Respondent’s Goods.”

2. Upon information and belief, Respondent is a Washington corporation with an address at 1165 N. Stratford Rd., Moses Lake, Washington 98837.

3. Upon information and belief, Respondent sells its goods bearing the TEN PIN BREWING mark in a restaurant and bar located where the brewery is housed, known as Papa's Sport Lounge & Casino, which had a grand opening date of July 26, 2013.

4. Petitioner is the owner of valid and enforceable common law rights in the mark NEFARIOUS TEN PIN ("Petitioner's Mark"). Since at least as early as February 23, 2004, Petitioner has continuously used the mark NEFARIOUS TEN PIN in commerce in connection with beer products. Petitioner's goods, beer, ale, lager, stout and porter, are referred to herein as "Petitioner's Goods."

5. On March 19, 2015, Petitioner filed U.S. Application Serial No. 86/570,103 for NEFARIOUS TEN PIN in Class 32 for "beer, ale, lager, stout and porter." Such application has been suspended in part due to the prior filing of Respondent's application for TEN PIN BREWING.

6. Petitioner sells its NEFARIOUS TEN PIN branded beer in its brewery located in Durango, Colorado as well as through distributors and retailers throughout the country.

7. Petitioner has invested a great deal of time and money in promoting Petitioner's NEFARIOUS TEN PIN beer, and is continuing to spend substantial amounts of time and money in the promotion of the same. Through such promotion and use by Petitioner, the NEFARIOUS TEN PIN mark is widely indicated as an indicator of source for Petitioner's beer among consumers in Colorado and throughout the county, and represents valuable and substantial goodwill of Petitioner in its business.

8. Petitioner's use of its NEFARIOUS TEN PIN mark predates both Respondent's application date and its claimed date of first use of TEN PIN BREWING. Thus, Petitioner has priority rights in its NEFARIOUS TEN PIN mark for use in connection with beer and will be damaged by the continued use and registration of Respondent's Mark.

9. Respondent's Mark is highly similar to Petitioner's Mark. They both contain the words "TEN PIN." This phrase, or the combined word "tenpin," is distinctive when applied to the parties' goods, as it typically refers to the game of bowling or the bowling pin itself. Petitioner has become known for using bowling themed names and artwork on its beer products, such as Petitioner's Pinstripe Red Ale, which was one of Petitioner's flagship products launched in the 1990s and which is still being sold. Petitioner's Mark contains the additional distinctive word "NEFARIOUS", while Respondent's Mark contains an additional descriptive term "BREWING." Thus, the distinctive elements of Respondent's Mark are wholly contained within Petitioner's Mark.

10. Respondent's Goods and Petitioner's Goods are identical.

11. Upon information and belief, Respondent's goods with which it uses the TEN PIN BREWING mark and the products with which Petitioner uses the NEFARIOUS TEN PIN mark are offered for sale and sold through the same channels of trade and offered and sold to the same class of purchasers.

### **COUNT I: LIKELIHOOD OF CONFUSION**

12. Petitioner hereby incorporates by reference and re-alleges each and every allegation set forth in Paragraphs 1 through 11.

13. Petitioner's dates of use of Petitioner's Mark are prior to both the date of filing of the '381 Registration and the date of Respondent's claimed date of first use.

14. In view of the similarity of the respective marks, identical goods, and identical channels of trade, Respondent's Mark so resembles Petitioner's Mark as to be likely to cause confusion or mistake, or to deceive, and the Examining Attorney for Petitioner's trademark application has suspended Petitioner's applications on such grounds.

### **COUNT II: FRAUD**

15. Petitioner hereby incorporates by reference and re-alleges each and every allegation set forth in Paragraphs 1 through 14.

16. Upon information and belief, Respondent had actual knowledge of Petitioner's NEFARIOUS TEN PIN mark and its use in connection with beer at the time of filing its Allegation of Use in Respondent's application, insofar as counsel for Petitioner sent a letter to counsel for Respondent, which was delivered on August 7, 2015, wherein Petitioner claimed that it was the senior user, had priority of rights, and demanded that Respondent cease use of Respondent's Mark and withdraw its application. Despite having received this letter, Respondent submitted its Allegation of Use on August 24, 2015 and signed the associated declaration.

17. Respondent thus committed fraud in the procurement of the '381 Registration by falsely stating, in the Allegation of Use declaration, "that to the best of the signatory's knowledge and belief, no other persons, except, if applicable, authorized users, members, and/or concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services/collective membership organization of such other persons, to cause confusion or mistake, or to deceive".

18. Upon information and belief, Respondent's false statements were made knowingly, as Respondent's CEO directly signed the declaration and Allegation of Use.

WHEREFORE, Petitioner believes that it is and will continue to be damaged by registration of Respondent's mark and respectfully prays that Registration No. 4,832,381 be cancelled, and that this petition be sustained in favor of Petitioner.

Petitioner submits herewith the requisite filing fee of \$300.00. The U.S. Patent and Trademark Office and Trademark Trial and Appeal Board are hereby authorized to collect any other fees necessitated by this Notice of Opposition from or credit any overpayments to the deposit account of Petitioner's attorneys, The Ollila Law Group LLC, Deposit Account No. 502622.

Dated: November 25, 2015

Respectfully submitted,

THE OLLILA LAW GROUP LLC  
Attorneys for Ska Brewing Co.

By: *Kathleen S. Ryan*  
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Telephone: 303-938-9999

Filed Electronically via ESSTA.

**CERTIFICATE OF SERVICE**

I do hereby certify that on this, the 25 November 2015, a true and correct copy of the above and foregoing PETITION FOR CANCELLATION was sent via first class mail delivery to:

Ten Pin Brewing Co.  
1165 N. Stratford Rd.  
Moses Lake, WA 98837

With a courtesy copy to

Douglas Reiser  
Resier Legal PLLC  
918 S Horton St. Suite 810  
Seattle, WA 98134

THE OLLILA LAW GROUP LLC  
Attorneys for Ska Brewing Co.

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