

ESTTA Tracking number: **ESTTA963723**

Filing date: **03/29/2019**

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 has filed a petition to cancel the registration indicated below.

Petitioner Information

| | | | |
|---------|--|-------------|----------|
| Name | Lord Hobo Brewing Company LLC | | |
| Entity | limited liability company | Citizenship | Delaware |
| Address | 5 Draper Street Woburn, MA 01801 UNITED STATES | | |

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|----------------------|--|
| Attorney information | Daniel P. Mullarkey Polsinelli PC 1401 I Street, NW, Suite 800 Washington, DC 20005 UNITED STATES dmullarkey@polsinelli.com, arehm@polsinelli.com, jwillard@polsinelli.com, dcdocketing@polsinelli.com 2026268305 |
|----------------------|--|

Registration Subject to Cancellation

| | | | |
|------------------|---|-------------------|------------|
| Registration No. | 4210819 | Registration date | 09/18/2012 |
| Registrant | Stony Creek Brewery, LLC 5 Indian Neck Avenue Branford, CT 06405 UNITED STATES Email: trademarks@carmodylaw.com | | |

Goods/Services Subject to Cancellation

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|---|
| Class 032. First Use: 2012/04/30 First Use In Commerce: 2012/05/26 All goods and services in the class are subject to cancellation, namely: Beer |
|---|

Grounds for Cancellation

| | |
|--------------------|---|
| Abandonment | Trademark Act Section 14(3) |
| Fraud on the USPTO | Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009) |

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|-------------|--|
| Attachments | Petition For Cancellation of 617 Trademark.pdf(27271 bytes) |
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| Signature | /daniel mullarkey/ |
| Name | Daniel P. Mullarkey |

| | |
|------|------------|
| Date | 03/29/2019 |
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | | |
|-------------------------------|---|--------------------------------|
| Lord Hobo Brewing Company LLC |) | |
| |) | |
| |) | Cancellation No.: _____ |
| Petitioner, |) | |
| |) | Reg. No.: 4,210,819 |
| v. |) | |
| |) | Mark: 617 |
| Stony Creek Brewery, LLC |) | |
| |) | |
| |) | Registered: September 18, 2012 |
| Respondent. |) | |

PETITION FOR CANCELLATION

Lord Hobo Brewing Company LLC, a Delaware Limited Liability Company, with a business address of 5 Draper Street, Woburn, MA 01801 (“Petitioner”), believes and alleges that it will be damaged by continued registration of the mark 617, U.S. Reg. No. 4,210,819 (“the ’819 Registration”), by Stony Creek Brewery, LLC, owner of record, whose address of record is 5 Indian Neck Avenue, Branford, Connecticut, 06405 (“Respondent”), and seeks to cancel the same pursuant to 15 U.S.C. §1064. The statutory cancellation fee of \$400 is submitted herewith.

As grounds for this cancellation, it is alleged that:

1. Petitioner is the owner of pending U.S. Application Serial No. 88/346,031 (“the ’031 Application”) for the mark 617 in connection with “beer” in class 32.
2. Petitioner anticipates receiving an office action, once the ’031 Application is examined, citing the ’819 Registration. Also, Petitioner is damaged by the continued registration of a nearly identical trademark when that trademark has gone abandoned and/or has never been used in U.S. commerce.

3. Upon information and belief, Respondent is no longer using the mark of the '819 Registration in U.S. commerce.

4. Upon information and belief, Respondent has not used in commerce for more than three years the mark of the '819 Registration.

5. Upon information and belief, Respondent has abandoned the mark of the '819 Registration.

6. Upon information and belief, Respondent never used in commerce the mark of the '819 Registration.

7. Upon information and belief, Respondent was not using in U.S. commerce the trademark of the '819 Registration on June 14, 2012, the date Respondent filed the statement of use that led to the initial registration.

8. Upon information and belief, Respondent was not using in U.S. commerce the trademark of the '819 Registration on September 17, 2018, the date Respondent filed the Section 8 declaration of use and Section 15 declaration of incontestability.

9. Upon information and belief, Respondent was not using in U.S. commerce the trademark of the '819 Registration on September 18, 2018, the date by which the '819 Registration must have been in-use in U.S. commerce in order to be maintained.

10. Upon information and belief, the declaration of use submitted on September 17, 2018, to obtain the '819 Registration, was fraudulent.

11. Upon information and belief, the specimen submitted on September 17, 2018, to maintain the '819 Registration, was fraudulent.

12. Upon information and belief, the picture used as the specimen submitted on June 14, 2012, to obtain the '819 Registration, is an exact copy of the picture used as the specimen

submitted on September 17, 2018, to maintain the '819 Registration.

13. The United States Patent and Trademark Office relied upon the fraudulent declaration of use and fraudulent specimen when it accepted the statement of use and registered the trademark on September 18, 2012.

14. The United States Patent and Trademark Office relied upon the fraudulent declaration of use and fraudulent specimen when it accepted the declaration of use and declaration of incontestability on September 26, 2018.

15. The United States Patent and Trademark Office reliance on the fraudulent declaration of use and fraudulent specimen constitutes fraud on the United States Patent and Trademark Office.

16. Upon information and belief, the '819 Registration was obtained as part of an area-code registration scheme orchestrated by Respondent, whereby Respondent has, to date, filed sixteen (16) identical and nearly identical pictures as specimens to obtain and maintain nine (9) trademark registrations for nine (9) different area codes.

17. The '819 Registration is currently registered solely due to the fraudulent activity by Respondent. Otherwise, it would be canceled for non-use and/or abandonment.

18. The '819 Registration should be canceled pursuant to 15 U.S.C. § 1064 for non-use, abandonment, and fraud upon the United States Patent and Trademark Office.

WHEREFORE, Petitioner prays that this Petition for Cancellation be granted, and U.S. Registration No. 4,210,819 be canceled.

Dated: March 29, 2019

Respectfully submitted,

/Daniel Mullarkey/

Daniel P. Mullarkey

Adam C. Rehm

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Attorneys for Petitioner,
Lord Hobo Brewing Company LLC

Certificate of Transmission

I hereby certify that this PETITION FOR CANCELLATION is being transmitted under 37 CFR 1.6(a)(4) as an electronic filing via the Electronic System for Trademark Trials and Appeals (ESTA) addressed to: Commissioner for Trademarks, Trademark Trial and Appeal Board, USPTO, on March 29, 2019.

/daniel mullarkey/
Daniel P. Mullarkey
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Attorneys for Petitioner