

ESTTA Tracking number: **ESTTA1034839**

Filing date: **02/10/2020**

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	Laurelwood Restaurants Inc. d/b/a Laurelwood Brewing Co.		
Entity	Corporation	Citizenship	Oregon
Address	5115 NE Sandy Boulevard Portland, OR 97213 UNITED STATES		

Attorney information	Steven E. Klein Davis Wright Tremaine LLP 1300 SW Fifth Avenue, Suite 2400 Portland, OR 97201 UNITED STATES sheilafoxmorrison@dwt.com, stevenklein@dwt.com, pdxtmenforcement@dwt.com, pdxtrademarks@dwt.com 503.778.5283		
----------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--

Registration Subject to Cancellation

Registration No.	4691675	Registration date	02/24/2015
Registrant	Workhorse Rye, LLC 1500 Innes Ave 2nd Fl San Francisco, CA 94124 UNITED STATES Email: rob@workhorserye.com		

Goods/Services Subject to Cancellation


Class 033. First Use: 2010/09/15 First Use In Commerce: 2012/03/22 All goods and services in the class are subject to cancellation, namely: Alcoholic aperitif bitters; Alcoholic bitters; Prepared alcoholic cocktail; Prepared cocktails consisting primarily of distilled spirits and also including beer; Whiskey

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
--------------------------------------	---------------------------------------

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	88099474	Application Date	08/30/2018
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	WORKHORSE
Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 2006/00/00 First Use In Commerce: 2007/00/00 Beer

Attachments	88099474#TMSN.png(bytes) WORKHORSE RYE.pdf(386933 bytes)
-------------	----------------------------------------------------------------

Signature	/s Steven E. Klein/
Name	Steven E. Klein
Date	02/10/2020

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

In the Matter of Trademark Registration No. 4,691,675
For the Mark: WORKHORSE RYE
Issued on: February 24, 2015

LAURELWOOD RESTAURANTS INC.
D/B/A LAURELWOOD BREWING CO., an
Oregon corporation,

Petitioner,

v.

WORKHORSE RYE, LLC, a California limited
liability company,

Respondent.

Cancellation No.

PETITION FOR CANCELLATION

Laurelwood Restaurants Inc. d/b/a Laurelwood Brewing Co., an Oregon corporation having an address of 5115 NE Sandy Boulevard, Portland, Oregon 97213 (“Petitioner”), believes that it will be damaged by the continued registration of the trademark WORKHORSE RYE, Registration No. 4,691,675, and hereby petitions to cancel same.

As grounds for the cancellation, Petitioner alleges as follows:

1. Petitioner is and has been engaged in the business of, *inter alia*, the production and sale of beer in commerce in the United States.

2. Petitioner is the owner of U.S. Trademark Application Serial No. 88/099,474, filed on August 30, 2018, for the mark WORKHORSE in connection with “*Beer*” in Class 32 (the “Application”). Petitioner has been using the WORKHORSE mark recited in the Application continuously in commerce with beer since at least as early as December 31, 2007.

Attached as Exhibit A is a true and correct copy of a printout of the record for the Application as reflected in the U.S. Patent and Trademark Office's Trademark Electronic Search System.

3. On August 22, 2019, the Examining Attorney issued a Section 2(d) refusal of the Application based on Registration No. 4,691,675 for the mark WORKHORSE RYE in connection with "*Alcoholic aperitif bitters; Alcoholic bitters; Prepared alcoholic cocktail; Prepared cocktails consisting primarily of distilled spirits and also including beer; Whiskey*" in Class 32 (the "Registration").

4. On information and belief, Workhorse Rye, LLC is a California limited liability company with an address of 1500 Innes Avenue, 2nd Floor, San Francisco, California 94124 ("Respondent") and the owner of record of Reg. No. 4,691,675 for the mark WORKHORSE RYE (the "Registration").

5. Assuming for the purposes of this pleading that the Examining Attorney reviewing the Application is correct that confusion is likely between the mark recited in the Application and the mark claimed by the Registration, the Examining Attorney's citation of the Registration has damaged Petitioner by preventing registration of Petitioner's WORKHORSE mark.

6. Petitioner has continuously used and not abandoned the trademark WORKHORSE in association with *beer* since at least as early as December 31, 2007.

7. Prior to Registrant's filing date or, on information and belief, any date of first use upon which Registrant can rely, and as a result of Petitioner's longstanding use and promotion of the WORKHORSE mark for *beer*, the public has come to recognize goods bearing the marks as goods coming from a single source, namely, Petitioner.

8. As Petitioner began using the WORKHORSE mark before the filing date of the Registration or, on information and belief, any earlier lawful priority date Registrant can claim in the WORKHORSE RYE mark shown in the Registration, Petitioner's rights in the WORKHORSE mark are senior to Registrant's rights.

9. Assuming that the Examining Attorney is correct that Registrant's Mark so resembles Petitioner's WORKHORSE mark that when used in association with Registrant's Goods, such use is to likely cause consumer confusion, or cause mistake, or deceive within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), for the reasons articulated by the Examining Attorney, including among other things:

- a. The WORKHORSE RYE mark depicted in the Registration is similar in appearance, sound, meaning and commercial impression to Petitioner's WORKHORSE mark; and
- b. The goods recited in the Registration are overlapping with, and/or related to the goods provided by Petitioner under the WORKHORSE mark.

10. Petitioner is damaged by the Registration insofar as Registrant has obtained statutory rights in Registrant's Mark in violation and derogation of Petitioner's prior and superior rights in Petitioner's WORKHORSE mark. Registrant is not entitled to the Registration by virtue of Petitioner's prior and continuous use of the WORKHORSE mark for *beer*.

11. Based on the foregoing, continued registration of the WORKHORSE RYE mark, as shown by the Registration, is likely to cause injury and damage to Petitioner.

WHEREFORE, Petitioner respectfully requests that registration of the mark WORKHORSE RYE as shown by U.S. Registration No. 4,691,675, be cancelled for Petitioner's

priority and likelihood of confusion under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), and that this Petition for Cancellation be sustained.

DATE: February 10, 2020.

DAVIS WRIGHT TREMAINE LLP

By /s Steven E. Klein/
Sheila Fox Morrison
Steven E. Klein
1300 S.W. Fifth Avenue, Suite 2400
Portland, OR 97201-5610
Tel: (503) 778-5311
Fax: (503) 778-5299
sheilafoxmorrison@dwt.com
stevenklein@dwt.com

Attorneys for Petitioner



United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)[Trademarks](#) > [Trademark Electronic Search System \(TESS\)](#)

TESS was last updated on Mon Feb 10 03:48:02 EST 2020

[TESS HOME](#) | [NEW USER](#) | [STRUCTURED](#) | [FREE FORM](#) | [BROWSE DICT](#) | [SEARCH OG](#) | [BOTTOM](#) | [HELP](#)[Logout](#) Please logout when you are done to release system resources allocated for you.

Record 1 out of 1

[TSDR](#)[ASSIGN Status](#)[TTAB Status](#)*(Use the "Back" button of the Internet Browser to return to TESS)*

WORKHORSE

Word Mark	WORKHORSE
Goods and Services	IC 032. US 045 046 048. G & S: Beer. FIRST USE: 20060000. FIRST USE IN COMMERCE: 20070000
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	88099474
Filing Date	August 30, 2018
Current Basis	1A
Original Filing Basis	1A
Owner	(APPLICANT) Laurelwood Restaurants Inc. DBA Laurelwood Brewing Co CORPORATION OREGON 5115 NE Sandy Blvd Portland OREGON 97213
Attorney of Record	Sheila Fox Morrison
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

[TESS HOME](#) | [NEW USER](#) | [STRUCTURED](#) | [FREE FORM](#) | [BROWSE DICT](#) | [SEARCH OG](#) | [TOP](#) | [HELP](#)[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)