

TTAB

ASM Liquor Pty Ltd  
Unit 8, 7-29 Bridge Road, Stanmore  
Sydney, NSW 2048, Australia

NC

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

13<sup>th</sup> Oct 2011

# 77036879

Dear Assistant Commissioner,

**Re: Petition for Cancellation**

We have received the attached two Petitions for Cancellation from the Petitioner Intercontinental Packaging Co trying to cancel our existing two marks:  
**Kinkynero Rum Reg # 3458693 Kinkylux Rum Reg # 3458692**

Please note that in point no 6. And no 7 of both the Petition for Cancellation that our trademark was obtained fraudulently is incorrect for the following reasons. Our product has been in use and was registered in Australia 28<sup>th</sup> Feb 2006. We can provide full details that we presented both Kinkylux and Kinkynero bottles to various US alcohol distribution companies between 2006 and 2011.

I list below two American alcohol distribution companies in particular.

We visited Bill Deutsch of **WJ Deutsch & Sons Ltd, 709 Westchester Avenue, Suite 300, White Plains, NY 10604** in August 2008 with both our bottles and also gave bottles of Kinkylux and Kinkynero to WJ Deutsch in October 2007, via our contacts with Yelllowtail Wine.

In March of this year, we sent bottles of Kinkylux and Kinkynero to Stephen Walker of **Sabemos Beverages, LLC, 5920 Pasteur Ct, Carlsbad, CA 92008**

In January 14<sup>th</sup> 2009, we set up a Limited Liability Company, **Aussie Spirit LLC**, via our US Lawyer Robert Zara, based in NY with the plan to distribute our bottles in the USA. The subsequent downturn in the world economy over the past 3 years put the brakes on this operation.

We therefor oppose the attached Petition for Cancellation and if required can provide full evidence of use and details/documentation relating to the information provided above.

My email address is [simon@asmliquor.com](mailto:simon@asmliquor.com) should you wish to discuss further.

Regards



Simon Sibia

Director ASM Liquor



10-18-2011

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

In the Matter of Registration No. 3458692  
Date of Registration: July 1, 2008

INTERCONTINENTAL PACKAGING CO.	)	Cancellation No. _____
	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
ASM LIQUOR PTY LTD.	)	
	)	
Registrant,	)	
	)	
_____	)	

Assistant Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

PETITION FOR CANCELLATION

Petitioner, INTERCONTINENTAL PACKAGING CO. believes that it will be damaged by registration of the mark shown in Registration No. 3458692 and hereby Petitions to Cancel the same. As grounds for cancellation, Petitioner hereby alleges as follows:

1. Petitioner is a Minnesota Corporation having its principal place of business at 1999 Shepard Road, St. Paul, MN 55116.
  
2. Upon information and belief, ASM LIQUOR PTY LTD. ("Registrant") is a Partnership organized and existing under the laws of the Country of Australia with its address at 128 Johnston Street, Unit 5, Annandale, Sydney, Australia.

3. Registrant has obtained a registration for KINKYLUX RUM for rum claiming a first date of use in commerce of January 12, 2006.

4. Petitioner is the owner of U.S. trademark Application Serial No. 85212918 for KINKY filed on January 7, 2011 for distilled spirits and liqueurs in Class 33.

5. Petitioner is being harmed by the Registration because the USPTO Examining Attorney has refused the Application for registration on the grounds that the Application is likely to be confused with the prior pending Registration.

6. Registration No. 3458692 was obtained fraudulently in that the Statement of Use filed by the Registrant, under notice of Section 1001 of Title 18 of the United States Code, stated that the mark was in use in commerce. The statement was false in that the mark was not in use in the commerce in, or with, the United States by Registrant or any related company, license or predecessor in interest of Registrant. Said statement was made by an authorized agent of Registrant with the knowledge and belief that the statement was false. Said false statement was made with the intent to induce authorized agents of the U.S. Patent and Trademark Office to grant said registration, and, reasonably relying upon the truth of said false statements, the U.S. Patent and Trademark Office did, in fact, grant said registration.

7. Registration No. 3458692 was obtained fraudulently in that, the Statement of Use, under notice of Section 1001 of the Title 18 of the United States Code, stated that the specimen submitted in support of the Statement of Use showed the mark as used in commerce. Said statement was false in that the specimens were not used by Registrant, or any related company, licensee or predecessor in interest of Registrant, in commerce in or with the United States. Said

false statement was made with the intent to induce authorized agents of the U.S. Patent and Trademark Office to grant said registration, and, reasonably relying upon the truth of said false statements, the U.S. Patent and Trademark Office did, in fact, grant said registration.

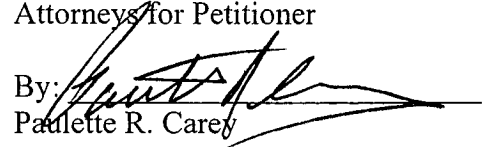
8. Petitioner is damaged and will continue to be damaged because Registrant's KINKYLUX mark stands as a bar to Petitioner's ability to federally register and protect its KINKY mark.

WHEREFORE, Opposer prays that this Petition for Cancellation of Registration No. 3458692 be granted resulting in judgment effecting the cancellation of the Registration.

Dated: September 30, 2011

Respectfully Submitted,

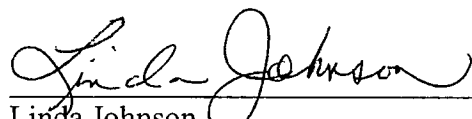
BUCHMAN LAW FIRM, LLP  
Attorneys for Petitioner

By:   
Paulette R. Carey  
510 Thornall Street, Suite 200  
Edison, NJ 08837  
(732) 632-6060

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2011, I served the foregoing Petition for Cancellation by delivering a copy to the United States Postal Service, as first class mail postage prepaid in an envelope addressed to:

Simon Sibia; ASM Liquor Pty LTD  
Unit 5, 128 Johnston Street; Annandale  
Sydney  
NSW 2038  
AUSTRALIA

  
Linda Johnson

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

In the Matter of Registration No. 3458693

Date of Registration: July 1, 2008

	)	Cancellation No. _____
INTERCONTINENTAL PACKAGING CO.	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
ASM LIQUOR PTY LTD.	)	
	)	
Registrant,	)	
	)	
_____	)	

Assistant Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

PETITION FOR CANCELLATION

Petitioner, INTERCONTINENTAL PACKAGING CO. believes that it will be damaged by registration of the mark shown in Registration No. 3458693 and hereby Petitions to Cancel the same. As grounds for cancellation, Petitioner hereby alleges as follows:

1. Petitioner is a Minnesota Corporation having its principal place of business at 1999 Shepard Road, St. Paul, MN 55116.
  
2. Upon information and belief, ASM LIQUOR PTY LTD. ("Registrant") is a Partnership organized and existing under the laws of the Country of Australia with its address at 128 Johnston Street, Unit 5, Annandale, Sydney, Australia.

3. Registrant has obtained a registration for KINKYNERO RUM for rum claiming a first date of use in commerce of January 12, 2006.

4. Petitioner is the owner of U.S. trademark Application Serial No. 85212918 for KINKY filed on January 7, 2011 for distilled spirits and liqueurs in Class 33.

5. Petitioner is being harmed by the Registration because the USPTO Examining Attorney has refused the Application for registration on the grounds that the Application is likely to be confused with the prior pending Registration.

6. Registration No. 3458693 was obtained fraudulently in that the Statement of Use filed by the Registrant, under notice of Section 1001 of Title 18 of the United States Code, stated that the mark was in use in commerce. The statement was false in that the mark was not in use in the commerce in, or with, the United States by Registrant or any related company, license or predecessor in interest of Registrant. Said statement was made by an authorized agent of Registrant with the knowledge and belief that the statement was false. Said false statement was made with the intent to induce authorized agents of the U.S. Patent and Trademark Office to grant said registration, and, reasonably relying upon the truth of said false statements, the U.S. Patent and Trademark Office did, in fact, grant said registration.

7. Registration No. 3458693 was obtained fraudulently in that, the Statement of Use, under notice of Section 1001 of the Title 18 of the United States Code, stated that the specimen submitted in support of the Statement of Use showed the mark as used in commerce. Said statement was false in that the specimens were not used by Registrant, or any related company, licensee or predecessor in interest of Registrant, in commerce in or with the United States. Said

false statement was made with the intent to induce authorized agents of the U.S. Patent and Trademark Office to grant said registration, and, reasonably relying upon the truth of said false statements, the U.S. Patent and Trademark Office did, in fact, grant said registration.

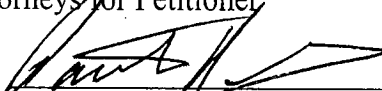
8. Petitioner is damaged and will continue to be damaged because Registrant's KINKYNERO mark stands as a bar to Petitioner's ability to federally register and protect its KINKY mark.

WHEREFORE, Opposer prays that this Petition for Cancellation of Registration No. 3458693 be granted resulting in judgment effecting the cancellation of the Registration.

Dated: September 30, 2011

Respectfully Submitted,

BUCHMAN LAW FIRM, LLP  
Attorneys for Petitioner

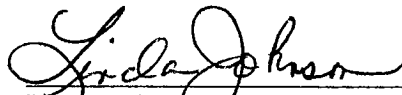
By:   
Paulette R. Carey  
510 Thornall Street, Suite 200  
Edison, NJ 08837  
(732) 632-6060



CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2011, I served the foregoing Petition for Cancellation by delivering a copy to the United States Postal Service, as first class mail postage prepaid in an envelope addressed to:

Simon Sibia; ASM Liquor Pty LTD  
Unit 5, 128 Johnston Street; Annandale  
Sydney  
NSW 2038  
AUSTRALIA

  
Linda Johnson

