

ESTTA Tracking number: **ESTTA433184**

Filing date: **09/30/2011**

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	Intercontinental Packaging Co.		
Entity	Corporation	Citizenship	Minnesota
Address	1999 Shepard Road St. Paul, MN 55116 UNITED STATES		

Correspondence information	Paulette R. Carey Attorney of record Buchman Law Firm, LLP 510 Thornall Street suite 200 Edison, NJ 08837 UNITED STATES prcarey@buchmanlaw.com Phone:7322254336		
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### Registration Subject to Cancellation

Registration No	3458692	Registration date	07/01/2008
Registrant	ASM Liquor Pty Ltd 128 Johnston Street Unit 5 Annandale, Sydney, AUSTRALIA		

### Goods/Services Subject to Cancellation

Class 033. First Use: 2006/01/12 First Use In Commerce: 2006/01/12 All goods and services in the class are cancelled, namely: Rum
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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)
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Attachments	9.30.11 KINKYLUX Petition for Cancellation.pdf ( 4 pages )(131210 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	/Paulette R. Carey/
Name	Paulette R. Carey
Date	09/30/2011



**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

	)	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. 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.

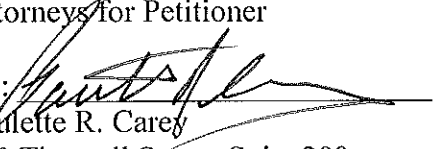
8. Petitioner is damaged and will continue to be damaged because Registrant's KINKYLUX mark stands as a bar to Petitioner's ability to federally register and protect its KINKY mark.

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