

ESTTA Tracking number: **ESTTA389499**Filing date: **01/21/2011**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	TROEGS BREWING COMPANY		
Entity	Corporation	Citizenship	Pennsylvania
Address	800 Paxton Street Harrisburg, PA 17104 UNITED STATES		

Attorney information	Harvey Freedenberg McNees Wallace & Nurick 100 Pine Street Harrisburg, PA 17108 UNITED STATES trademarks@mwn.com,hfreenen@mwn.com,bgregg@mwn.com Phone:717-232-8000
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Registration Subject to Cancellation

Registration No	3047757	Registration date	01/24/2006
Registrant	Fegley Enterprises, Inc. 569 Main Street Bethlehem, PA 18018 UNITED STATES		

Goods/Services Subject to Cancellation


Class 032. First Use: 2004/11/19 First Use In Commerce: 2004/12/01
All goods and services in the class are cancelled, namely: microbrewed beer and ale

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2887242	Application Date	11/27/2002
Registration Date	09/21/2004	Foreign Priority Date	NONE
Word Mark	THE MAD ELF TROEGS HOLIDAY ALE BREWED WITH HONEY, CHERRIES & CHOCOALTE MALT		

Design Mark	
Description of Mark	The mark consists of design, plus words, letters and/or numbers in a stylized format printed on labels attached to kegs, barrels, tap handles, bottles, cans and any other associated packaging containing the goods.
Goods/Services	Class 032. First use: First Use: 2002/12/10 First Use In Commerce: 2002/12/10 Beer, ale and lager

U.S. Registration No.	3035721	Application Date	01/03/2005
Registration Date	12/27/2005	Foreign Priority Date	NONE
Word Mark	MAD ELF		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2004/02/09 First Use In Commerce: 2004/02/09 ales and lagers		

Attachments	76473009#TMSN.gif (1 page)(bytes) 78541265#TMSN.jpeg (1 page)(bytes) A2281104.PDF (6 pages)(17876 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	/Brian Gregg/
Name	Brian P. Gregg
Date	01/21/2011

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

In re Registration of:

Registrant	:	Fegley Enterprises, Inc.
Reg. No.	:	3,047,757
Mark	:	RUDE ELF'S RESERVE and Design
Registration Date	:	January 24, 2006

TROEGS BREWING COMPANY,	:	
Petitioner	:	
	:	
v.	:	Cancellation No.
	:	
FEGLEY ENTERPRISES, INC.,	:	
Registrant/Respondent	:	

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

PETITION TO CANCEL

1. Petitioner Troegs Brewing Company ("Petitioner"), a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania and having a principal place of business at 800 Paxton Street, Harrisburg, Pennsylvania 17104, believes that it will be damaged by Registration No. 3,047,757 for the mark RUDE ELF'S RESERVE and Design (the "RUDE ELF Registration") and hereby petitions, in accordance with 37 C.F.R. §2.111(b), to cancel said registration.

2. To the best of Petitioner's knowledge, the name and address of the current registrant of the RUDE ELF Registration is Fegley Enterprises, Inc. ("Respondent"), a Pennsylvania corporation with a place of business at 569 Main Street, Bethlehem Pennsylvania, 18018.

3. On June 21, 2004, Respondent filed an intent-to-use application, Serial No. 76/598,388, to register the mark RUDE ELF'S RESERVE and Design ("RUDE ELF Mark") for use with "microbrewed beer and ale" in International Class 32 ("Respondent's Application").

4. On March 22, 2005, Respondent requested an amendment to its application to allege a date of first use of the mark of November 19, 2004, and a date of first use of the mark in interstate commerce of December 1, 2004. Attached to Respondent's Request for Amendment were specimens of use consisting of beer bottle labels. On July 28, 2005, the United States Patent and Trademark Office ("USPTO") issued a notice of acceptance of Respondent's amendment to allege use.

5. The RUDE ELF Mark registered on January 24, 2006.

6. Upon information and belief, prior to 2010, Respondent produced and sold only modest amounts of its beer under the RUDE ELF Mark in a geographically limited area.

7. Upon information and belief, the majority of Respondent's sales of its beer which bears the RUDE ELF Mark was through its own brewpub and in limited quantities of 750 ml bottles.

8. Upon information and belief, in February 2010 Respondent nearly doubled its production of 12 oz bottles of beer sold under the RUDE ELF Mark and greatly expanded both the amount of beer sold under the RUDE ELF Mark and the territorial scope of those sales.

9. Petitioner is the owner of the following U.S. trademark registrations in the USPTO (the "MAD ELF Registrations"):

Trademark	Registration No.	Filing Date	Registration Date	Date of First Use	International Class/Goods
THE MAD ELF TROEGS HOLIDAY ALE BREWED WITH HONEY, CHERRIES & CHOCOLATE MALT and design	2,887,242	November 27, 2002	September 21, 2004	December 10, 2002	Int. Cl. 32 – beer, ale, and lager
MAD ELF	3,035,721	January 3, 2005	December 27, 2005	February 9, 2004	Int. Cl. 32 – ales and lagers

10. Collectively, the marks which are the subject of the MAD ELF Registrations are referred to as the MAD ELF Mark.

11. The MAD ELF Registrations have become incontestable as a matter of law under 15 U.S.C. §1065.

12. Since at least as early as December 10, 2002, Petitioner has been, and is now, using the MAD ELF Mark in connection with ales.

13. Petitioner's use of the MAD ELF Mark has been valid and continuous since its date of first use.

14. Petitioner's use of its MAD ELF Mark and Petitioner's filing of the application for the '242 Registration pre-date both Respondent's first use of, and application for registration of, the RUDE ELF Mark, and establishes the priority of Petitioner's MAD ELF Mark.

15. Petitioner's MAD ELF Mark is symbolic of extensive goodwill established by Petitioner, has acquired a high degree of recognition through continued use and expenditures of time, effort and money in advertising and promotion, and serves as a unique identifier of the goods offered by Petitioner.

16. Respondent's RUDE ELF Mark is similar to Petitioner's MAD ELF Mark in that both marks incorporate the "elf" element with an adjective.

17. The goods which bear Respondent's and Petitioner's marks, namely, beer or ale, are identical.

18. Upon information and belief, Respondent's goods with which it uses the RUDE ELF Mark, as claimed in Respondent's Application, and the products with which Petitioner uses its MAD ELF Mark are offered for sale and are sold through the same channels of trade and offered and sold to the same class of purchasers.

COUNT I
LIKELIHOOD OF CONFUSION

19. Petitioner hereby incorporates by reference and realleges each and every allegation set forth in Paragraphs 1 through 20.

20. Petitioner's dates of use of its MAD ELF Mark are prior to the date of filing of Respondent's Application and the date of Respondent's claimed date of first use.

21. The MAD ELF Registrations are valid and subsisting and are *prima facie* evidence of Petitioner's exclusive right to use the MAD ELF Marks in commerce on the goods specified in such registrations.

22. In view of the similarity of the respective marks, identical channels of trade and the identical goods offered for sale by the respective parties, Respondent's RUDE ELF Mark so resembles Petitioner's MAD ELF Mark, previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive as to source by suggesting that Respondent's goods are associated with or approved, endorsed, affiliated, authorized or sponsored by Petitioner.

WHEREFORE, Fegley Enterprises, Inc's. RUDE ELF Mark, Registration No. 3,047,757, is damaging to Troegs Brewing Company and Troegs Brewing Company, accordingly, requests that the instant Petition to Cancel be granted and that the aforesaid registration be cancelled.

The fee required by §2.6(a)(16) is enclosed herewith.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By /s/ Brian P. Gregg
Harvey Freedenberg
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100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000

Attorneys for Petitioner
Troegs Brewing Company

Dated: January 21, 2011

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a true and correct copy of the
Petition to Cancel was mailed via First Class Mail, postage prepaid, to:

Fegley Enterprises, Inc.
569 Main Street
Bethlehem, Pennsylvania 18018

With copy to:

Sanford J. Piltch, Esquire
1132 Hamilton Street, Suite 201
Allentown, Pennsylvania 18101

/s/ Brian P. Gregg
Brian P. Gregg
Of Counsel for Petitioner, Troegs Brewing Company

Dated: January 21, 2011