

ESTTA Tracking number: **ESTTA37215**

Filing date: **06/29/2005**

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

<b>Name</b>	Regal Ware, Inc.		
<b>Entity</b>	Corporation	<b>Citizenship</b>	Delaware
<b>Address</b>	1675 Reigle Drive Kewaskum, WI 53040 UNITED STATES		

<b>Attorney information</b>	Daniel R. Johnson Ryan Kromholz & Manion, S.C. P O Box 26618 Milwaukee, WI 53226 UNITED STATES djohanson@rkmiplaw.com, ppechulis@rkmiplaw.com, jkromholz@rkmiplaw.com, mhockersmith@rkmiplaw.com Phone:262-783-1300		
-----------------------------	---	--	--

#### Registration Subject to Cancellation

<b>Registration No</b>	2641867	<b>Registration date</b>	10/29/2002
<b>Registrant</b>	Aqua Vie Beverage Corporation P.O. Box 6759 Ketchum, ID 83340 UNITED STATES		
<b>Goods/Services Subject to Cancellation</b>	Class 032. First Use: 19920530, First Use In Commerce: 19920625 Goods/Services: NON-ALCOHOLIC BEVERAGES, NAMELY, FLAVORED DRINKING AND SPRING WATER		

<b>Attachments</b>	PETITION TO CANCEL.pdf ( 3 pages )
--------------------	------------------------------------

<b>Signature</b>	/Daniel R. Johnson/
<b>Name</b>	Daniel R. Johnson
<b>Date</b>	06/29/2005

1 Joseph A. Kromholz, Reg. No. 34,204  
John M. Manion, Reg. No. 38,957  
2 Daniel R. Johnson, Reg. No. 46,204  
Melissa S. Hockersmith  
3 RYAN KROMHOLZ & MANION S.C.  
P. O. Box 26618  
4 Milwaukee, Wisconsin 53226-0618  
Telephone: (262) 783-1300  
5 Facsimile: (262) 783-1211

6 Attorneys for Regal Ware, Inc.

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

9		
10	Regal Ware, Inc., Petitioner	) Cancellation No.:
11	v.	) Registration No: 2641867
12	Aqua Vie Beverage Corporation, Registrant	) Date of Issue: October 29, 2002
13		) Serial No.: 76186368
14		) Atty. Docket No.:

15 PETITION FOR CANCELLATION

16  
17 In the matter of a registration of an alleged trademark AQUA VIE in International  
18 Class 032, Registration Number 2641867, filed December 26, 2000, registered on the  
19 Principal Register on October 29, 2002, claiming first use on non-alcoholic beverages,  
20 namely, flavored drinking and spring water on May 30, 1992 and first use in interstate  
21 commerce on June 25, 1992, believed owned by Aqua Vie Beverage Corporation (a  
22 Delaware corporation) allegedly doing business at P.O. Box 6759, Ketchum, ID 83340.

23 Regal Ware, a Delaware corporation which has its principal place of business at  
24 1675 Reigle Drive, Kewaskum, Wisconsin, 53040-9400 believes it is or will be damaged  
25 by Registration Number 0767659 and hereby petitions to cancel the same on the following  
26 grounds:

- 27 1. That, upon information and belief, Registrant's mark has been abandoned due to  
28 nonuse.

- 1
  - 2
  - 3
  - 4
  - 5
  - 6
  - 7
  - 8
  - 9
  - 10
  - 11
  - 12
  - 13
  - 14
  - 15
  - 16
  - 17
  - 18
  - 19
  - 20
  - 21
  - 22
  - 23
  - 24
  - 25
  - 26
  - 27
  - 28
2. For example, Registrant's web site indicates that Registrant's goods are available at: <http://shop.store.yahoo.com/aquavie/> yet Registrant's goods are not in fact available at that web address.
  3. For further example, Registrant's telephone number, (208) 622-7792 has been disconnected.
  4. For further example, Registrant does not have an available telephone number in its indicated corporate area of Ketchum, ID.
  5. For further example, in the case of SECURITIES AND EXCHANGE COMMISSION V. AQUA VIE BEVERAGE CORP., THOMAS J. GILLESPIE, AND JOSEPH J. WOZNIAK, CV-04-414-S-EJL (D. Idaho), the SEC states that it filed civil injunctive action against "Aqua Vie, and Aqua Vie's CEO, Thomas Gillespie for fraudulently promot[ing] Aqua Vie's common stock by means of millions of false and misleading tout sheets faxed to homes and businesses [and offering and selling an unregistered stock]. ... This two-pronged unregistered offer and sale effectively kept afloat a struggling company that was far more successful at marketing its stock that its only product, bottled water." <http://www.sec.gov/litigation/litreleases/lr18966.htm>
  6. For further example, one industry news reporting web site, [www.bevnet.com](http://www.bevnet.com), indicates that "THIS BRAND HAS BEEN DISCONTINUED".
  7. For further example, even Aqua Vie's own counsel in CV-04-414-S-EJL (D. Idaho) cannot reach Aqua Vie in its attempt to withdraw from its representation that case.
  8. Regal Ware has a bona fide intent to use the mark AQUA VIE for goods such as water distillers, and a mineral drip that places minerals into water for consumption, and is about to file an intent-to-use application to register the AQUA VIE mark, and believes registration of the AQUA VIE mark might be refused in view of respondent's registration No: 2641867 ("Registrant's Mark") purportedly for flavored drinking and spring water.
  9. If Registrant is permitted to maintain Registration No. 0 767659 that registration might prevent Petitioner from being able to register and protect Petitioner's Mark.

1 10. On information and belief, Registrant does not use the mark as shown in the  
2 registration and has abandoned it.

3 11. In view of the Petitioner's foregoing application and Registrant's abandonment of  
4 their mark, Registrant's mark AQUA VIE should be cancelled.

5 WHEREFORE, PETITIONER REQUESTS AND PETITIONS that the  
6 Registration Number 2641867, and any other Registrations of said mark by Registrant be  
7 cancelled.

8 Please transact all business in the Patent and Trademark Office in connection  
9 herewith and arising herefrom, and direct all communications in said cancellation,  
10 addressed to the undersigned attorneys.

11  
12 Respectfully submitted:

13 Date: June 29, 2005

Ryan, Kromholz & Manion, S.C.

14  
15 By: /Daniel R. Johnson/

16 Joseph A. Kromholz  
17 John M. Manion  
18 Daniel R. Johnson  
19 Melissa S. Hockersmith  
20 RYAN KROMHOLZ & MANION, S.C.  
21 P. O. Box 26618  
22 Milwaukee, Wisconsin 53226-0618

23  
24  
25  
26  
27  
28 Attorneys for Regal Ware, Inc.