

ESTTA Tracking number: **ESTTA655212**

Filing date: **02/11/2015**

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	Michelle Mackellar		
Entity	Individual	Citizenship	UNITED STATES
Address	C/O Gabor & Marotta LLC 1878 Victory Boulevard Staten Island, NY 10314 UNITED STATES		

Attorney information	Daniel C. Marotta Gabor & Marotta LLC 1878 Victory Boulevard Staten Island, NY 10314 UNITED STATES dan@gabormarottalaw.com Phone:718-390-0555		
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Registration Subject to Cancellation

Registration No	4474949	Registration date	01/28/2014
Registrant	Sotea, LLC N5441 Broder Road Shawano, WI 54166 UNITED STATES		

Goods/Services Subject to Cancellation

Class 032. First Use: 2013/04/18 First Use In Commerce: 2013/04/18
All goods and services in the class are cancelled, namely: Non-alcoholic beverages, namely, carbonated beverages

Grounds for Cancellation

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

U.S. Registration No.	4544757	Application Date	03/27/2013
Registration Date	06/03/2014	Foreign Priority Date	NONE
Word Mark	SO SO T		

Design Mark	
Description of Mark	The mark consists of the letters "SOT",with a dash symbol in the center of theletter "O", over the letters "SO" in a bubble type font in the background.
Goods/Services	Class 032. First use: First Use: 2013/01/23 First Use In Commerce: 2014/01/23 Soft drinks flavored with tea

Attachments	85887845#TMSN.png(bytes) Petition to Cancel.pdf(67755 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	/Daniel C. Marotta/
Name	Daniel C. Marotta
Date	02/11/2015

4. On June 19, 2013, Registrant filed a Section 1(A) application to register "SOTEA" in International Class 032 for "non-alcoholic beverages, namely, carbonated beverages."
5. The "SOTEA" mark registered on the principal register on January 28, 2014.
6. Petitioner's filing date of its intent-to-use application on March 27, 2013 pre-dates Respondent's filing date of the "SOTEA" mark on June 19, 2013. Further, Petitioner's filing date establishes constructive use under Section 7(c) of the Lanham Act, conferring a right of priority.
7. Respondent's "SOTEA" mark is confusingly similar to Petitioner's "So T" mark in that both marks sound identical. Moreover, the goods which bear both Respondent's and Petitioner's marks, namely, carbonated beverages/soft drinks flavored with tea, are identical.
8. In view of the similarity of the respective marks and the identical goods offered for sale by the respective parties, Respondent's "SOTEA" mark so resembles Petitioner's "So T" mark, and is likely to cause confusion, mistake, or deceive a source by suggesting that Respondent's goods are associated with or approved, endorsed, affiliated, authorized or sponsored by Petitioner.

WHEREFORE, Petitioner prays that this Petition to Cancel be sustained and granted in favor of Petitioner and that Registration No. 4,474,949 be cancelled and removed from the Principal Register.

Dated: Staten Island, New York

September 18, 2014

Respectfully Submitted,

GABOR & MAROTTA LLC



By: Daniel C. Marotta, Esq.

Attorneys for Petitioner

1878 Victory Boulevard

Staten Island, New York 10314

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