

ESTTA Tracking number: **ESTTA687289**

Filing date: **08/03/2015**

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	Chander Arora		
Entity	Individual	Citizenship	UNITED STATES
Address	160 Highland View Drive Birmingham, AL 35242 UNITED STATES		

Attorney information	Kathleen Cooney-Porter Oblon, McClelland, Maier & Neustadt, L.L.P. 1940 Duke Street Alexandria, VA 22314 UNITED STATES tmdocket@oblon.com,kcooney-porter@oblon.com,cdonahue@oblon.com Phone:703-413-3000		
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**Registration Subject to Cancellation**

Registration No	4425918	Registration date	10/29/2013
Registrant	Vodkila LLC 218-11 138th Avenue Springfield Gardens, NY 11413 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 033. First Use: 2013/04/01 First Use In Commerce: 2013/04/01 All goods and services in the class are cancelled, namely: Alcoholic beverages, namely, prepared cocktails
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**Grounds for Cancellation**

The mark is merely descriptive	Trademark Act section 2(e)(1)
The mark is deceptively misdescriptive	Trademark Act section 2(e)(1)

Attachments	executed Petition for Cancellation.pdf(465269 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	/kcp/
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Name	Kathleen Cooney-Porter
Date	08/03/2015

Attorney Docket No.: 457860US29DMS

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

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Chander Arora,

Petitioner,

v.

Vodkila LLC

Respondent.

Cancellation No.: \_\_\_\_\_  
Registration No. 4,425,918  
Mark: VODKILA

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**PETITION FOR CANCELLATION**

Chander Arora, a citizen of the U.S.A. ("Petitioner") having an address of 160 Highland View Drive, Birmingham, Alabama 35242 believing he is or will be damaged by Registration No. 4,425,918 for the mark VODKILA hereby petitions to cancel same.

As grounds for this petition, Petitioner alleges:

1. The record owner of Registration No. 4,425,918 is Vodkila LLC ("Respondent"), a limited liability company organized under the laws of New York, located at 218-11 138<sup>th</sup> Avenue, Springfield Gardens, New York 11413.

2. Petitioner has filed with the U.S. Patent and Trademark Office ("USPTO") U.S. Application Serial No. 85/254,761 to register the mark VODQUILA in connection with spirits in Class 33.

3. The USPTO Trademark Examining Attorney issued an Office Action in Application Serial No. 85/254,761 on December 5, 2013, refusing registration of Petitioner's mark under Trademark Act Section 2(d), 15 USC §1052(d), based on a likelihood of confusion with the VODKILA mark of Registration No. 4,425,918.

4. In view of the USPTO's refusal to register Petitioner's VODQUILA mark because of the existence of Respondent's VODKILA mark and registration, Petitioner has standing to bring and maintain this cancellation action.

5. Respondent filed Application Serial No. 85/236,565 on February 8, 2011, to register the mark VODKILA in connection with alcoholic beverages, namely, prepared cocktails, in Class 33, pursuant to the Section 1(b) intent-to-use filing basis.

6. Respondent filed a Statement of Use on September 6, 2013 for Application Serial No. 85/236,565, alleging a date of first use anywhere of April 1, 2013, and a date of first use in commerce of April 1, 2013.

7. Respondent's Application Serial No. 85/236,565 issued on the Principal Register as Registration No. 4,425,918 on October 29, 2013 in connection with alcoholic beverages, namely, prepared cocktails, in Class 33.

8. Registration No. 4,425,918 does not include a claim of acquired distinctiveness for the mark VODKILA under Trademark Act Section 2(f), 15 U.S.C. §1052(f).

9. Respondent has not alleged that the mark VODKILA has acquired distinctiveness or has secondary meaning with respect to alcoholic beverages, namely prepared cocktails.

### **FIRST GROUND FOR CANCELLATION**

#### **(Descriptiveness)**

10. Petitioner incorporates by reference paragraphs 1-8 of the Petition for Cancellation.

11. The mark VODKILA is unregistrable pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), because VODKILA is merely descriptive when used on or in connection with the goods listed in Registration No. 4,425,918, to wit, alcoholic beverages, namely, prepared cocktails, in Class 33.

12. The term VODKILA is merely a combination of VOD, the initial portion of the generic term VODKA, and KILA, the phonetic equivalent of the terminal portion of the generic term TEQUILA.

13. The combination of vodka and tequila is a well-known alcoholic beverage.

14. Respondent's prepared cocktails sold under the VODKILA mark consist primarily of vodka and tequila.

15. The term VODKILA merely conveys to relevant purchasers that Respondent's prepared alcoholic cocktails are comprised of vodka and tequila.

16. The term VODKILA is merely descriptive of the goods listed in Registration No. 4,425,918, and in the absence of acquired distinctiveness, cannot function as a source indicator.

17. The term VODKILA is merely descriptive of the goods listed in Registration No. 4,425,918, and as such does not meet the statutory requirements for registration on the Principal Register.

### **ALTERNATE GROUNDS FOR CANCELLATION**

#### **(Deceptive misdescriptiveness)**

18. Petitioner incorporates by reference paragraphs 1-8 of the Petition for Cancellation.

19. Alternatively, VODKILA is unregistrable pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), because VODKILA is deceptively misdescriptive when used on or in connection with the goods listed in Registration No. 4,425,918, to wit, alcoholic beverages,

namely, prepared cocktails, in Class 33, on the grounds that Respondent's prepared cocktails do not contain vodka and tequila.

20. Vodka and tequila are commonly used ingredients in prepared alcoholic cocktails.

21. Purchasers encountering Respondent's prepared alcoholic cocktails are likely to believe that the term VODKILA indicates the goods contain vodka and tequila.

22. Respondent's prepared cocktails do not contain vodka and tequila, and therefore the term VODKILA is deceptively misdescriptive of the goods.

WHEREFORE, Petitioner prays that his Petition for Cancellation be granted, that judgment be entered in favor of Petitioner, and that Respondent's Registration No. 4,425,918 be canceled.

Petitioner has appointed Kathleen Cooney-Porter, a member of the law firm of Oblon, McClelland, Maier & Neustadt, L.L.P., a member of the Bar of the District of Columbia, and other attorneys at the firm, to prosecute this cancellation proceeding and to transact all business in and before the USPTO in connection therewith. Please address all correspondence to:

**Kathleen Cooney-Porter**  
OBLON, MCCLELLAND, MAIER & NEUSTADT, L.L.P.  
1940 Duke Street  
Alexandria, Virginia 22314

The required filing fee for this Petition for Cancellation is being paid online. The Director is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Deposit Account No. 50-2014.

Respectfully submitted,

CHANDER ARORA

By:



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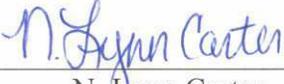
Dated: August 3, 2015

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing PETITION FOR CANCELLATION was served on Respondent, as identified by the records of the U.S. Patent and Trademark Office, this 3<sup>rd</sup> day of August, 2015, by sending same via First Class mail, postage prepaid, to:

Vodkila LLC  
218-11 138<sup>th</sup> Avenue  
Springfield Gardens, NY 11413

  
\_\_\_\_\_  
N. Lynn Carter