

ESTTA Tracking number: **ESTTA21419**

Filing date: **12/15/2004**

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>	ProbioHealth, LLC		
<b>Entity</b>	Limited Liability Company	<b>Citizenship</b>	Delaware
<b>Address</b>	350 S. Beverly Drive Suite 170 Beverly Hills, CA 90212 UNITED STATES		

<b>Attorney information</b>	Jessica Stone Levy Preston Gates & Ellis LLP 925 Fourth Avenue Suite 2900 Seattle, WA 98104 UNITED STATES trademarks@prestongates.com Phone: 206.623.5780
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#### Registration Subject to Cancellation

<b>Registration No</b>	2346798	<b>Registration date</b>	05/02/2000
<b>Registrant</b>	ARKSON NUTRACEUTICALS CORP. 13230 E. FIRESTONE BOULEVARD "M" SANTA FE SPRINGS, CA 90670 UNITED STATES		
<b>Goods/Services Subject to Cancellation</b>	Class 005. First Use: 19980917, First Use In Commerce: 19980917 Goods/Services: DIETARY FOOD SUPPLEMENTS CONTAINING ALL NATURAL FERMENTED SOY COMPOUNDS, ISOFLAVONES, GENISTEIN, DAIDZEIN, VITAMINS,		

MINERALS AND AMINO ACIDS, PRODUCED IN A CONTROLLED ENVIRONMENT IN THE FORM OF POWDER, BEVERAGE POWDERS OR LIQUID FORM
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<b>Attachments</b>	pet canc bio soy.txt ( 2 pages )
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<b>Signature</b>	/Jessica Stone Levy/
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<b>Name</b>	Jessica Stone Levy
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<b>Date</b>	12/15/2004
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD  
In the matter of trademark Registration No. 2,346,798  
For the mark BIO SOY and Design  
Registered on May 2, 2000  
PROBIOHEALTH, LLC,

Cancellation No. \_\_\_\_\_

—  
Petitioner,

v.

ARKSON NUTRICEUTICALS CORP.,

Registrant.

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

PETITION FOR CANCELLATION

PROBIOHEALTH, LLC ("Probiohealth"), a limited liability company organized under the laws of the state of Delaware, with an office located at 350 S. Beverly Dr., Suite 170, Beverly Hills, CA 90212, believes that it will be damaged by the continuing registration of the designation BIO SOY and Design for "dietary food supplements containing all natural fermented soy compounds, isoflavones, genistein, daidzein, vitamins, minerals and amino acids, produced in a controlled environment in the form of powder, beverage powders or liquid form," Reg. No. 2,346,798, registered on the Principal Register of the U.S. Patent and Trademark Office, and hereby petitions to cancel the same.

To the best of petitioner's knowledge, the name and address of the current owner of Registration No. 2,346,798 is Arkson Nutraceuticals Corp. (?Arkson?), with an office located at 13230 E. Firestone Blvd. M, Santa Fe Springs, CA 90670.

As grounds for cancellation it is alleged that:

1. Petitioner Probiohealth has filed a trademark application, serial number 78/242,669 on April 23, 2003, for the mark PROBIOSOY based on a bona fide intent to use the mark in commerce, in connection with the following goods, as amended: ?probiotics in the nature of a dietary supplement containing soy, soybeans, soy proteins and soy extracts?.

2. In an office action dated June 16, 1004, United States Patent and Trademark Office examiner Marc J. Leipzig continued his refusal of registration of this mark under Trademark Act Section 2(d), because it ??so resembles?? Arkson's registration for BIO SOY and Design ??as to be likely to cause confusion, to cause mistake, or to deceive?.

3. On information and belief, Arkson has discontinued use of the BIO SOY and Design mark in association with the goods listed in the registration, and has abandoned the mark by failure to continuously use the mark in interstate commerce.

4. If, as the examiner contends, Arkson's mark so resembles Probiohealth's mark as to be likely, when applied to the goods or services listed for each mark, to cause confusion, then Arkson's registration should be cancelled due to non-use and abandonment.

5. Further, upon information and belief, since long prior to Arkson's claimed first use of its registered BIO SOY and Design mark in

September of 1998, the term "bio" has long been used in connection with goods such as Arkson's, and the entire mark is therefore descriptive of the goods identified under Arkson's registration.

6. Probiohealth will be damaged by the continuing registration by Arkson of BIO SOY and Design, because such registration will give color of exclusive statutory rights in Arkson, when in fact the term "bio" registered is descriptive and Registrant not likely the first user of the term for which registration was received, and the "bio" portion of the mark is a term that has been used by others in a descriptive sense for several years.

WHEREFORE, Petitioner believes that it will be damaged by the continuing registration of registrant's said designation and prays that the registration No. 2,346,798 be cancelled on grounds of non-use and abandonment, and on grounds of the term's descriptiveness.

Please recognize as attorneys for Petitioner in this proceeding Jessica Stone Levy, Louis C. Cullman, Glenn C. Schroeder, J. Christopher Lynch and the law firm of Preston Gates & Ellis LLP, 925 Fourth Avenue, Suite 2900, Seattle, Washington, 98104.

Please address all communications to Jessica Stone Levy, at Preston Gates & Ellis LLP.

The filing fee believed to be in the amount of \$300.00 is enclosed herein.

DATED this 15th day of December, 2004.

PRESTON GATES & ELLIS LLP

By\_\_\_\_/Jessica Stone Levy/\_\_\_\_\_

Jessica Stone Levy

Attorneys for Petitioner

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